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LABOUR LEGISLATION IN ALBERTA: 1973 - 1987

CONSENSUS, COOPERATION OR CONUNDRUM?

by

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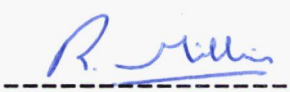

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ABSTRACT

There are many theories available to explain the political process of policy development. Two broad types of theories which account for government policy-making are society-centered, (Pluralism & Marxism) and state-centered. This research will examine the hypothesis that a government must accomodate major interests when formulating and implementing policy. The hypothesis fits comfortably in neither of the aforementioned theories. It may however, serve to draw society-centered and state-centered theory together (under certain circumstances).

Examination of this hypothesis will be undertaken by 1) conducting a literature review of various theories for evaluation of governmental policy making processes; 2) reviewing two case studies in Alberta's industrial relations; 3) evaluating the conditions of each case in light of the theories reviewed; 4) submitting what conclusions appear appropriate regarding the value of the theories as explanatory tools when applied to the case studies, and 5) reviewing the hypothesis. We will find that under certain circumstances a government can act autonomously only if it listens to, ameliorates, and if need be - acts to discourage through a system of disincentives - major interests in the social realm.

ACKNOWLEDGEMENTS

For his guidance and patience, I would like to thank Keith Archer. Without his help this work would never have been finished, it would have gone on and on without any apparent goal or conclusion - drifting in a sea of metaphors, scrapping on shoals of misdirection; trashed by the tides of time, to one day sink slowly into the depths of

... but I digress. Thank you Keith.

To my parents I owe the determination that allowed me to finish this work as it began to falter. There to catch me as I took my first steps, there to watch me as I walked out on my own, and there to stand by me as I succeed - Mom and Dad - your love will never be forgotten.

For their company in pursuit of both the higher and lower pleasures, I thank my friends, Bediako Buahene, Steve Haigh, Dawn Mitchell, Terry Kuny, and Brian Wik.

Finally, to Dion goes my greatest gratitude and acknowledgement. Were it not for you, this work would not be.

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In August of 1986, the government of Alberta decided that a comprehensive review of its private sector labour legislation was in order. Conducting an extensive process of hearings spanning the province, the country, and the globe, the Minister of Labour submitted his committee's findings to the government in November of that same year. Informed by the submissions made to the Minister's committee, the government introduced Bill 60 in 1987.

Bill 60, the Labour Code, was immediately met with opposition from those it was introduced to regulate; employers and trade unionists alike expressed their disapproval. Indeed opposition to the bill was so vociferous that it was withdrawn pending revision.

Bill 60 was not the only labour bill of the period to be critisized. Bill 53, The Construction Labour Relations Act, legislated that all members of the building trades, and their employers currently under contract, or having been covered by a collective agreement, negotiate a master construction agreement to cover all construction trades throughout the province. Though major interests in the industry had earlier made submissions to the Minister's Review Committee, Bill 53 was withdrawn also having met with stiff opposition among those it was intended to regulate.

Why was the government forced to retreat on these major policy initiatives in an area of exclusive provincial jurisdiction? Could it be because submissions to the Review Committee went unheeded? This research will examine the hypothesis that:

> A government must accomodate major interests when formulating and implementing policy.

To frame this examination I will 1) conduct a literature review of various theories for evaluation of governmental policy making processes; 2) review two case studies in Alberta's industrial relations; 3) evaluate the conditions of each case study in light of the theories reviewed; 4) submit what conclusions appear appropriate regarding the value of the theories as explanatory tools when applied to the case studies, and 5) review the hypothesis.

There are many theories available to explain the political process of policy development - indeed

there are so many that evaluation of each would be a task beyond the limits of a work such as this.(1) Thus this research focusses on two broad types of theories which account for government policy-making: society-centered and state-centered. The society-centered approach can be further divided into pluralist and Marxist perspectives.(2) Each approach will be discussed by way of examining representative writers in the field.

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(1) See: Leslie A. Pal., State, Class and Bureaucracy: Canadian Unemployment Insurance and Public Policy., (McGill - Queen's University Press, Kingston, 1988)., pp. 7-11. for a discussion of the scope of currently pursued work. Eric Nordlinger's On the Autonomy of the Democratic State also provides a review. As well, significant development is evident in the work of individual authors as in the revised opinions of Dahl and Lindblom. Indeed one need only pick up an edition of the Canadian Journal of Political Science or the American Political Science Review for an update on the latest studies and methods of evaluation. Of course none of this touches on the evolution of Political Science\Theory, a bibliography of which would make this note a study in itself.

(2) Pal., "The first category, exemplified by both Marxist and pluralist approaches, is society-centered. ... The second category of explanation is state-centered and grants a large degree of autonomy to the state in its formation of public policy." (p.8)

1) Society - Centered Approaches to Policy Analysis

i) Pluralism

Pluralist policy analysis in the late 1950's recognized interest groups as a key to understanding the decision-making process.

> The key to analyzing interest groups, ... was not through the classification of structures but through differentiating the functions performed by parties and interest groups. The defining characteristic of interest groups is that they articulate the claims and needs of society and transmit them into the political process. ... Parliaments and bureaucracies enact them as policies and laws and implement them.(3)

Concepts of pluralism first found cohesive formulation in the combined and individual works of Robert A. Dahl and Charles E. Lindblom. As Dahl and Lindblom observed in 1953;

> As everyone knows, ... different individuals identify with a great diversity of different groups with differing norms and identifications.(4)

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(3) Suzanne Berger, ed., Organizing Interests in Western Europe, (Cambridge University Press, Cambridge,1981)., pp. 8-9. The considerations summarized stem from the combined efforts of European and American academics.

(4) Robert A. Dahl, and Charles E. Lindblom., Politics Economics and Welfare., (Harper and Brothers, New York, 1953)., p.329

In recognizing the multi-faceted nature of societal relations, Dahl and Lindblom suggested that it might be possible for common individuals to have some influence in some areas of their lives. Belonging to a group afforded individuals an opportunity to take advantage of "strength in numbers". Of course, individuals belonging to a number of different groups do not have the same strengths of feeling about each group. For example: an individual may be a member of a labour union and a home owner at the same time, but feel stronger about residential issues than union issues.

Let us assume for the moment that an individual finds that his property-tax is going to increase by 4% while his wages remain the same. That individual might feel frustration over his tax increase or he might feel frustration over his stagnant wage - or he might feel frustration over both. The alternatives available to him range from apathetic resignation to outraged indignation and action.

Dahl and Lindblom's pluralism reveals that the individual in question need not feel isolated in his predicament. He may choose to invoke the power of the labour union to represent his concerns; he may choose to join a rate-payers association and invoke its influence; he may choose both or neither, and/or he may become very active or

lose his interest almost immediately. The challenge for political scientists using a pluralist methodology then becomes to try to understand relationships between various groups, the support they enjoy among their members, and the influence they exercise. Of course the problems of group membership are potentially far more complicated than this simple example. As Dahl and Lindblom note:

> many individuals belong to several groups, and when these conflict they feel the "cross pressures" of conflicting group loyalties. One way to escape these cross pressures is by political apathy - a flight from conflict. Another, however, is to reduce the conflict by compromise through bargaining.(5)

It is this "compromise through bargaining" that serves as the linch pin for pluralism. The extent to which groups are able to come together, recognize and voice their grievances, and realize their points of common interest may be the measure of a successful pluralistic exchange.

One can imagine various forums for an exchange of opinion but for Dahl and Lindblom the quintessential arena was that of government.

> The politician is as much the human enlightenment of a bargaining society as any single role-player can be. ...

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(5) Ibid., p.329

> Because he is a bargainer, a negotiator, the politician does not often give orders. He can rarely employ unilateral controls.(6)

To sum up, under Dahl and Lindblom's pluralism, societal relations could best be understood by consideration of the articulated interests of various groups. And inasmuch as each group represented the interests of its members, inequalities underlying the capitalist states would be ameliorated. In the forum of pluralist interaction select interests of even the weakest member could be won.(7)

However, "by the seventies, serious doubts were emerging about the adequacy of this conception of interests, as the general theory of society and politics out of which this approach had been developed came under attack" leading to alternative theories looking to functions of the state for explanation of policy development.(8) We will turn to a consideration of this new trend in a moment but first it is important to note that the basic premise of

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(6) Ibid., p.333 We will find shortly that a significant portion of more recent political theory disagrees with the latter portion of this note.

(7) It should be noted that all of an individual's interests would not always be realized but that in the long run issues of interest won and lost would balance out.

(8) Berger et al., p.9

pluralism remains an important one and underlies much of the work that continues to influence our understanding today. An example of this work, one of significant importance to this thesis, is that of Justice H. D. Woods, Chairman of the Canadian government's 1968 Task Force on Industrial Relations.

A jurist by profession, Woods was asked by the Prime Minister to evaluate the Canadian Industrial Relations environment. Given a natural predilection for legal parameters, Woods' work nonetheless stands as an example of the influence the theory of pluralism has had on recent work.(9)

> The principle of freedom under the law, in an environment designed to facilitate individual development and participation has produced in North America a pluralistic society. ...
>
> The motivating force within this general framework is economic self-interest.(10)

We see in this excerpt from the Task Force report three important points. 1) An explicit recognition of the

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(9) Though 1968 is arguably not recent, we will see shortly that the work of Woods has in turn influenced to a considerable degree, work as recent as that contained in the MacDonald Royal Commission of 1986.

(10) H. D. Woods, Chairman., Canadian Industrial Relations: the Report of the Task Force on Labour Relations., (Privy Council Office, 1968)., p.12

pluralistic nature of North American society; 2) an implicit recognition of the same in the conclusion that the environment is designed to facilitate individual participation, and 3) a specific reference to the motive force for involvement. As you will recall from our earlier discussion of pluralism, the individual in our example would become involved (or not) in the process depending on how strongly he\she felt about his\her property-tax or wage. Knowledge of the strength of that feeling is important for an emperical analysis of pluralism (and due to the complex nature of interests it is here that the quantification of pluralism becomes difficult). Nonetheless, the Task Force attempted to define parameters for measurement - those being the economic self-interests of the actors.(11)

Operating under the assumption of a society based on principles of pluralism, the Task Force perceived the Industrial Relations environment in a pluralistic manner.

> Unions and management are bound to have divergent views on the collective bargaining system. Neither in principle nor in practice can any such system hope to

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(11) Economic self-interest is a criterion that we will use in subsequent analysis of our case studies, though we will find that it cannot stand alone as a measure.

> command universal acceptance. But the process cannot survive without something approaching a general consensus regarding its underlying premises.(12)

Therefore the Task Force prescribes that; "more emphasis could be placed on the prevention of disputes and the long-run improvement of relationships. To these ends ... (we recommend) greater reliance on preventitive mediation, continuous bargaining, and experimental clauses... ."(13) Such a prescription is deemed necessary by the Task Force precisely because they recognize faults in the real life application of interest group bargaining.

> Paradoxical as it may appear, collective bargaining is designed to resolve the conflict through conflict, or at least through the threat of conflict. It is an adversary system...(14)

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(12) Ibid., p.92

(13) Ibid., p.201. It should be noted that the Task Force also recommended concrete alterations to policy such as a recommendation that labour Boards be given the power of a Superior Court and that hearings of unfair practices be heard before it rather than by the civil law of the Magistrates' Court. (p.148) However, it is ultimately the goal of this part to concern itself with the classification of the Task Forces' theoretical foundation and as such I feel it sufficient at this point in the discussion to set aside specificities and deal more with the generalities of theory. As the Task Force states, "We seek to minimize the role of the state in the collective bargaining process and in places urge a reduction in state intervention; yet on balance we propose an increase in government involvement." (p.138)

(14) Ibid., p.119

If in this real life application of the pluralist format, serious conflicts arise, what is the government to do? Looking back to Dahl and Lindblom we find that politicians are the quintessential pluralists - are they then to assist? That is what the Task Force recommends - "an increase in government involvement (without an increase in regulation)". The response begs another question. How is a party (the government) to become involved in a basically confrontational arrangement without eventually intervening? This question leads us to our last discussant from the pluralist school, Joseph Weiler. We will find though, that our question is a ticklish one and one that will occupy a good deal of our consideration throughout this work.

In 1986 the findings of the Royal Commission on the Economic Unity and Development Prospects for Canada were published. As a portion of the commission study, labour law was inspected. Clearly influenced by the philosophy and work of the Task Force completed almost 20 years earlier, Joseph Weiler undertook to consider the evolutionary role of legislation in labour relations. Weiler concluded that actors in the labour environment would be well served by legislative mechanisms that would promote co-operation and compromise and devices that would promote

consensus.(15)

> In my view, the quick legal solutions that have been applied to labour relations for the past forty years have exhausted the capacity of the law to achieve the productive, competitive and full employment economy that we want....(We have been) tinkering with the labour law system rather than improving labour-management relations.(16)

Examining Canada's labour environment from a judicial reference, Weiler observed that the established legal regime for preventing work stopages was beginning to disintegrate. Courts were overturning the decisions of Labour Boards and, in some cases, passing injunctions only to have them ignored by workers.(17) Weiler attributed the problem partially to the fact that "judicial edicts issued from on high are not so useful in influencing a positive response from people".(18)

Recognizing that the process of dispute reconciliation has been addressed by labour legislation in the form of administrative tribunals, Weiler is nonetheless critical of

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(15) Joseph Weiler., "The Role of Law in Labour Relations"., Labour Law and Urban Law in Canada., ed. Ivan Bernier and Andree Lajoie, Royal Commission on the Economic Union and Development Prospects for Canada., Vol. 51 p.2

(16) Ibid.,p.1

(17) Ibid.,pp.18-24.

(18) Ibid.,p.27

the tribunal's adopted procedures. In many jurisdictions, the decisions of tribunals may be appealed to the courts. Procedures and rulings become quickly bound by legal jurisprudence, and complicated by the interpretation of past decisions. Hearings become so complicated that lawyers specializing in contract relations must assist those appearing before tribunals. Having described the problem of too much legal intervention in labour relations - court injunctions and formal administrative tribunals - Weiler suggests that "in order to encourage the parties involved in an industrial dispute to resolve their differences, the process must be designed to be more participatory and more informal."(19) If tribunal procedures are informalized, the recommendations coming from their hearings are likely to be far more innovative and will have a better opportunity to address individual issues unfettered by past precedent.

Weiler's second observation deals not so much with active legal involvement, but more with the intent of legislation. For legislation to work at all it must take the desires of the major parties it regulates into account.

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(19) Ibid.,p.27

> If one side is convinced that the law by which it is governed is thoroughly unfair because of the manner in which it was produced, it will not provide tacit support to the Board in the enforcement of the law.(20)

Thus Weiler's assistance in considering our question of a government's role in a basically confrontational arrangement amounts to two conclusions. 1) Disputes resolutions procedures should be simplified, and 2) legislative reform should recognize the concerns of those it is set to regulate, providing a mechanism which will create an environment conducive to co-operation and compromise.

The concepts for analysis of labour legislation provided by Weiler place his method firmly in the school of pluralist methodology. His is an understanding of the policy making process which requires, indeed prescribes, cooperation as the key to effective policy implementation. Weiler believes that the interests of employer, employee and government all can be realized through a rational acceptance of each others concerns only if all are adequately involved.

To sum up our discussion of the theory of pluralism and its application to Industrial Relations then, one may conclude that there are many interest groups active (or

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(20) Ibid.,p.50

latent) at any given moment, members of which may be active or latent depending on personal motivation. That among these groups there are two readily discernible as Business and Unions, and that their relationship is confrontational - an arrangement pluralist analysts feel may be ameliorated by mutual compromise, or, failing that, the involvement of the government as a conciliator or mediator, but preferably not as an arbitrator. And that by all means, governments should listen carefully to the desires of those regulated by policy.

Can such an outline be successfully applied to understand real Industrial Relations? We shall see. For the moment though, we will turn to a review of our second method of society-centered analysis; Marxism.

ii) Marxism

Predating pluralism by almost one hundered years, Marxism in its earliest form hinged on a theoretical relationship between man, his labour, and the product of that labour. For Karl Marx a man could not understand himself, could not realize his true self, if he was separated from his work.(21) The factor of alienation

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(21) Karl Marx., "Preface to a Critique of Political Economy" Karl Marx Selected Writings., David McLellan,ed.,

remains today as a key to understanding societal relations from a Marxist perspective. Of course, the second key is that of economic determinism. In Marx's application of Hegel's deterministic Geist, economics played the central role.

Marx considered himself to be a scientist, not a philosopher, and as such wanted to apply scientific principles to theory.(22) Marx claimed to be able to see in economic relations to the means of production, an evolutionary and predictable characteristic. He claimed that one day men would realize the qualities of their alienation and would revolt against the holders of the means of production - the bourgeoisie and their puppets in government - taking those means to themselves thereby realizing themselves.(23)

(Oxford Press, Oxford., 1977)., p.389 See also Marx "Thesis on Feuerbach"., Karl Marx Selected Writings., p.158 His true self: borrowed from Hegel, the concept dealt basically with an idea that for any man to be able to realize his true self in relation to Geist, that man must first be able to realize himself in relation to his work.

(22) Alvin W. Gouldner., The Two Marxisms., (The Seabury Press., New York., 1980)., p.227

(23) For Marx, the state served as the mechanism by which the owners of the means of production were able to maintain their control.

One hundred years later, the scenario of revolution has largely been rejected, yet the key of alienation remains. In fact, for Marxists it serves as the means to understand all social relations in the western democracies. And the state - as a whole or in various fractions depending on the analyst - remains the servant of large property holders. One such analyst is Nicos Poulantzas.

Nicos Poulantzas' considerations of the western democracies were founded in the principles of Marxism, informed by the work of Gramsci, and applied Althusser's structural methodology. It was his goal to develop an understanding of the social - government relationship by developing a theoretic construct of the complexities of relations as he saw them.

For Poulantzas, governments were the focus of competing capital forces that were drawn together out of a requirement to dominate the working class(es). By Poulantzas' account the

> political practice of the dominant classes has two functions: 1) to constitute the unity of the dominant class(es) out of the isolation of their economic struggle, 2) by means of a whole political-ideological operation of its own, to constitute their strictly political interests as representatives of the general interests of the people/nation. This is made necessary by the particular structures of the capitalist state, and its relation to the economic

> class struggle, and made possible precisely by the isolation of the economic struggle of the dominated classes. It is by analysing this whole complex operation that we can establish the relation between this national-popular-class state and the politically dominant classes in capitalist formation.(24)

The co-optive nature of Poulantzas' state is the hallmark of a Marxist analysis. Yet though Poulantzas speaks of analyzing the "whole complex operation" of the "national-popular-class state" he does not apply his consideration to a particular issue or system.(25) Nonetheless Poulantzas does concern himself with much of the interaction between state and society - the issue of legitimacy included.

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(24) Nicos Poulantzas., Political Power and Social Classes., (NLB. London., 1973)., p.137 As we continue and introduce Nordlinger's "autonomy-enhancing capacities and opportunities" of the state, you may note a similarity to the second function of Poulantzas' state. Indeed, both consider the state capable of creating its own environment and though both are based on pre-meditiated action it is important to note that Nordlinger's state acts on a case by case basis, a plan-for-the-moment, if you will - while Poulantzas' state is wholly founded with domination and co-option as its central thesis.

(25) This observation was made by Ralph Miliband in his article "The Capitalist State: Reply to Nicos Poulantzas" New Left Review.,59 Jan-Feb., 1970, sparking a lively debate between the two that would last several years.

> The dominated classes live their conditions of political existence through the forms of dominant political discourse: this means that often they live even their revolt against the domination of the system within the frame of reference of the dominant legitimacy.(26)

And what is the implication of this for Poulantzas? That in so doing, the dominated classes further legitimate the system. In a round about sort of way, Weiler and Poulantzas have come to the same conclusion (though I'm sure neither would be impressed with the observation). Upon breaking the law, upon acting in opposition to the domination of the system, individuals begin to call into question the legitimacy of that system. Of course the question of legitimacy then becomes difficult as we must determine at what point state action becomes illegitimate. How many people need act in violation of the law? Or in fact, is this the question at all? Is a system's legitimacy based upon universal compliance? I will suggest that it is not, but we will deal with this in our final Chapter.

Our discussion of Poulantzas leaves us with two questions for consideration in our case studies: 1) does the state act as the agent for the dominant class(es)? and 2) can the dominated classes change their terms of refer-

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(26) Nicos Poulantzas., p.223 We will find in our case studies that this observation is borne out.

ence to the state - can they influence policy while living within the dominant legitimacy? It is quite clear that Poulantzas would respond yes and no respectively. Again, we shall see. But for now we turn to our final representative in this review of the Marxist methodology, Leo Panitch.

For Leo Panitch, as with Poulantzas before him, "the notion of the state managing the common affairs of the whole bourgeoisie, even incorporating as it does the idea of autonomy, is only the starting point for a Marxist theory of the state."(27)

As did Poulantzas, Panitch concerns himself with the legitimating function of the state. Citing James O'Connor, Panitch notes that "a capitalist state that openly uses its coercive forces to help one class accumulate capital at the expense of other classes loses its legitimacy".(28) Allowing that it is the state's mandate to maintain conditions for capital accumulation, Panitch concludes that it must do so under conditions of social harmony whenever possible. Unfortunately though, business-state-union rela-

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(27) Leo Panitch., "The role and nature of the Canadian State" in The Canadian State: Political Economy and Political Power., Leo Panitch ed. (University of Toronto Press, Toronto., 1977)., p.4

(28) Ibid., p.8

tions in Canada have not been developing in this manner. More and more, according to Panitch, the state is having to resort to its coercive function to maintain conditions for capital accumulation.

> What we are witnessing today, in fact, is the end of the era of free collective bargaining in Canada. The era being closed is one in which the state and capital relied, more than before World War II, on obtaining the consent of workers generally, and unions in particular, to participate as subordinate actors in Canada's capitalist democracy. The era ahead marks a return, albeit in quite different conditions, to the state and capital relying more openly on coercion - on force and on fear - to secure that subordination.(29)

Is Panitch's 1985 scenario being played out in Industrial Relations today? A consideration of our cases will only reveal a portion of the answer, however portions when combined should help in our understanding. At the minimum, we hope to delineate certain variables for later examination.

Finally, and in a statememt summarizing the Marxist analysis, Panitch considers the role of the state in its relation to society.

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(29) Leo Panitch and Donald Swartz., From Consent to Coercion: The Assault on Trade Union Freedoms., (Garamond Press, Toronto., 1985)., p.13

> It has been the very lack of relative autonomy of the state, the sheer depth of its commitment to private capital as the motor force of the society, which ... explains the lengths to which the state has gone in promoting private capital accumulation.(30)

Thus we may understand a Marxist perspective of social-state relations to be one where economics are the final determining factor, and that the state, as the agent of the dominant class(es) will - in the long run - create an environment for their sustenance and enhancement. At first glance we might expect that if this is indeed the case, our cases will reveal a government acting clearly in the interests of the dominant class(es). Frustratingly though, the Marxist analysis includes the caveat that the state will act "in the long run" best interests of the dominant class(es). The Industrial Relations cases that we will review may or may not provide evidence to support this method. Nonetheless a contribution to the evaluation of the Marxist approach may be made by this work. The results of this study may be combined with others, and - "in the long run" - yield conclusive evidence.

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(30) Ibid., pp.16-17.

2) State-Centered Approaches to Policy Analysis

i) An Autonomous Bureaucratic State

Our second theoretical proposal for understanding the government and its role in Industrial Relations considers the possibility that the government is to a certain and significant degree - autonomous. That unlike certain aspects of society-centered theory, state-centered theoretical approaches suggest that forces within the government structure might be better evaluated to understand policy.

Eric A. Nordlinger was among the first to extensively develop this idea.(31) For Nordlinger, pluralism's concept of the state and its officials as "permeable, vulnerable and malleable" was wrong.(32)

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(31) To a degree, the work of Nordlinger is prefaced by the work of those studying the relations of individuals within the state. See; John A. Porter's The Vertical Mosaic., where familial and collegial relations among state officials are studied. However, Nordlinger separates himself from the connotations of elitism stemming from such studies. "State preferences are rarely unified preferences. They are usually the product of all sorts of conflict, (and) competition..." Eric A. Nordlinger., On the Autonomy of the Democratic State.., (Harvard University Press, Cambridge, Mass., 1981)., p.15

(32) Ibid., p.3 You will recall that Dahl and Lindblom's conception of the politician was of a bargainer, and negotiator; one who "does not often give orders ... (or) employ unilateral controls."

> Some serious questions are raised about the society-centered model, in particular, the societal constraint assumptions upon which it rests. But it should be absolutely clear that my purpose is very far from denying its extensive applicability, explanatory power and validity. ... The state-centered model is thought of as a complement to the society-centered model."(33)

In fact, Nordlinger suggests that "the democratic state is regularly, though by no means entirely, autonomous in translating its preferences into authoritative actions, and markedly autonomous in often doing so even when they diverge from societal preferences."(34) This is a view contrary to traditional society-centered conceptions, and certainly, such action by the state is not recommended by the conclusions of Woods or Weiler. Nonetheless, this is not to say that Nordlinger's observations may not be correct. Indeed, our case studies will indicate that there is a compelling case to be made here.

In any case, to develop Nordlinger's theories further, public officials - those holding influential positions in

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(33) Ibid., p.6 Note that Nordlinger makes no distinction here between pluralism and marxism, suggesting that each share - to a certain degree - the same foible.

(34) Ibid., p.8 As we shall see later, our case study of the Calgary and Alberta construction industry certainly provides evidence of this observation. The consequences however, are interesting to note.

"legislatures, legislative committees, cabinets, presidents, bureaucratic agencies, mayors, district councils, prefects, and so forth" take advantage of what he calls the state's "autonomy-enhancing capacities and opportunities" to "somehow forestall, neutralize, transform, resist, or overcome the societal constraints imposed upon them."(35)

Some may accuse Nordlinger of a fairly jaundiced view of the neo-pluralistic approach various states have made toward consultation, but again, our case studies will seem (to a certain degree) to prove him out. Actually it becomes clear that Nordlinger's view is not so much jaundiced by cynicism, but rather informed by a practical view that state officials are bound by office and budgetary constraints. He observes that in the case of most elected and appointed officials; "the state is their vocation and their career patterns are much more influenced by other officials than by societal actors. The chief reference

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(35) Ibid., pp. 20,30. Nordlinger specifically identifies offices enjoying state autonomy separating himself from other theories which consider the state to encompass other specific realms. ie. the analysis of Nicos Poulantzas that suggests that all functions of ideological inculcation including churches, schools, families, clubs, etc. are actually functions of the state.

group for public officials is other public officials."(36) There is in this observation however, a notable weakness.

To discount the important influence of social interaction outside of "work" as though the state were an insular society may be misleading. (Certainly marxists would level this charge quite vigorously.) Though there is some modicum of evidence to support this observation - the "clique" factor of professional relations (law students work and socialize with law students, postal workers work and socialize with postal workers) it is no less important to note that others do influence individuals within those circles and to the extent that those relations influence the attitudes of state officials, Nordlinger's thesis is weakened.(37) However, he goes on to observe the budgetary, bureaucratic nature of the policy making process and makes a valid point regarding the importance of such factors. Indeed, anyone who has worked in a hierarchically structured organization with more than one department under a finite and common funding source will agree with Nordlinger that the interaction of demands on those

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(36) Ibid., p.32

(37) In fact Nordlinger recognizes outside influences but asserts that inside influences are stronger. (p.38)

resources play a vary large role in the determination of the policies of the organization.

Although Nordlinger may over-emphasize the role of the state in inculcating in its officials a particular state ideology, it is no less important to realize that the societally influenced state officials are constrained to work within the budgets and demands of their offices.

This criticism, however, should not be seen to detract from the important contribution made by Nordlinger. In focusing on the state and its officials, in recognising their tendency toward - and certain potential for - autonomous action, Nordlinger revealed an important area for consideration which had to that point been underdeveloped. Indeed, as we have already noted, Nordlinger's analysis will shed some revealing light on events in Alberta's Industrial Relations.

Nordlinger does not stand alone in his conviction that state-centered analysis should be considered. As you will recall from our early discussion, Nordlinger emphasized state-centered analysis while simultaneously highlighting the continuing value of society-centered study.(38) Others

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(38) If it seemed by his concentration on structures and functions of the state he ignored the influence of society-centered analysis, it was only that his pur-

have taken Nordlinger's course and have pursued a state-centered analysis, among them are Bruce Doern and Leslie A. Pal.

> In response to external criticism, or indeed to internal-policy reviews, governments always face a minimum choice between doing nothing and doing something.(39)

While Doern and Aucoin's focus on minimum options available to a government is clearly state-centered, it implicitly recognizes a certain degree of significance in "external criticism". Thus we find that - for Doern and Aucoin - the state has a choice the very fact of which reveals autonomous features. And that by that choice, the state may act or reacte in response to external criticism.

Doern's work, both with Aucoin and Richard W. Phidd, develops an understanding of the state that: 1) recognizes the complex nature of state functions, and 2) recognizes the complex nature of demands being made on the state. For Doern, competing expectations give rise to an "emphasis on (government) management ... precisely because of the

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pose was to develop his substantiating evidence clearly therefore proving that his state-centered analysis had a valid role to play in public policy analysis.

(39) G. Bruce Doern and Peter Aucoin., ed. Public Policy in Canada: Organization, Process, and Management., (Gage Publishing Ltd., Toronto, 1979)., p.xv

complexity of goals, instruments, and agencies and hence the need for the process to be "managed"."(40) Beside management of concerns, Doern raises a second important question; that of legitimacy.

When deciding whether to act and in choosing what degree of action to take, governments must recognize that there are

> underlying competing claims for legitimacy, as reflected in and between:
>
> a) Cabinet - parliamentary Government...
>
> b) large economic groups such as business (big and small), labour and agriculture, some of whose central institutions have made increasing demands for involvement in tri-partitie or multi-partitie consultative forums; and
>
> c) other public and so-called "public-interest" groups who question and suspect the legitimacy of accountability.(41)

Thus, though the government always has the option of wholly autonomous action, it might be advised to concern itself, at least to a certain extent, with the expectations of those who evaluate its legitimacy. "To respond, or to be seen to be responding, to a political demand or problem,

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(40) Richard W. Phidd, G. Bruce Doern., The Politics and Management of Canadian Economic Policy., (MacMillan of Canada., Toronto., 1978)., p.7

(41) Doern and Aucoin., p.307

governing politicians face a limited range of choices to the ways in which they can give effect to their decisions. They can exhort, spend, or regulate. The choice of doing nothing or of appearing to do nothing is usually not tolerated."(42)

The real difficulty for governments according to Doern, is when they attempt to apply their role as managers. Even though, by Doern's analysis, it seems most certainly to be government's role to be manager, problems arise.

> Process and performance collide and people who want to "manage" the policy process are confronted by groups who not only refuse to be "managed" but who also insist on new decision procedures and positional influence in the decision units."(43)

As a closing note on Doern; like Nordlinger, Doern's governments are seen to be autonomous in that they hold the final decision as to policy implementation. However, unlike Nordlinger's "autonomy - enhancing capacities and opportunities", Doern's managerial state must be seen to respond in some manner in order to maintain its legitimacy. The fact that Doern's managerial state must be seen to

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(42) Ibid., p.321

(43) Ibid., p.321 We will find that this observation seems almost prescient when we consider our case studies.

respond, should not lead to the conclusion that the state lacks autonomy of action. In the final consideration, actors within the state make the policy decisions. Whether they avail themselves of input is to a large degree their own concern. If this suggests that Doern's state-centered analysis appears pluralistically concerned, one should remember that neither Doern nor Nordlinger have at any time denied the important role played by forces outside of the state.

We have now, two analytical methods by which to consider the policy making process: one society-centered; one state-centered. A brief review of each has been rendered, so it seems now that an emperical test would be in order.

Our case studies in Alberta's Industrial Relations will provide us with certain elements of that test, but before we proceed to that, we shall consider an interesting and revealing work in Canadian public policy; one that 1) evaluates the explanatory abilities of each analytical method, and 2) helps place our work in the context of an ongoing and developing Canadian political science. The work to which we refer is Leslie A. Pal's inquiry into Canadian Unemployment Insurance.

> The first category, (of analytical explanation) exemplified by both Marxist and pluralist approaches, is society centered. ...
>
> The second category of explanation is state-centered and grants a large degree of autonomy to the state in its formation of public policy. The state is an independent, and often dominant, actor in the policy process, pursuing its own interests (while organizing the capacities of societal actors).(44)

Considering methods of state-centered analysis, Pal notes that

> The "public choice" school and organization theory... (stress) the autonomous interests of bureaucratic actors and the effects these have on policy. To what extent was UI shaped by departmental philosophy, administrative practices, and organizational imperatives?(45)

These are some of the questions to which Nordlinger addresses his analysis. Yet his analysis is somewhat confusing as he tacks back and forth between observations such as the one above, and ones that indicate a conviction that individuals within the state are ultimately responsible for policy <u>but influenced</u> by state and bureaucratic processes and relationships along the way. Pal indicates that this study of the state's influence upon its officials

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(44) Pal., p.8

(45) <u>Ibid</u>., p.10

is undertaken in the Bureaucratic model though he notes the same problems with that analytical structure as were noted above.

> It is always possible, of course, to argue that these internal conflicts simply reflect class struggles or ideologies secreted by a capitalist society. ... While there certainly is a measure of truth in these assertions, they make the comparisons of alternative theories difficult, if not impossible.(46)

Nonetheless, the state-centered analytical method is not without merit. It has been adopted by many as an explanatory method by which to understand the formation of public policy.

By way of concluding remarks on the efficacy of examination of bureaucratic relations, Pal notes that "much more about the Canadian UI program, both about how it was designed and how it evolved, can be learned by observing the consequences of the (actuarial ideology of the commission and bureaus involved)."(47) Intuitively, this should come as no surprise as it would seem to be the function of these groups to structure and then manage policy ideas given them, variations upon which would likely be on an incremental fashion - a fine-tuning if you will.

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(46) Ibid., p. 10

(47) Ibid., pp.134-135.

The possibility remains though, that were it not for society-centered pressures being brought to bear on the state, it is unlikely that the state would initiate action of its own accord. This observation also holds when we consider program developments and adjustments over the duration of a policy. Again, it may quite readily be conceded that consideration of the "actuarial ideology" of the bureaus involved, lends an understanding to programs rendered. It must again be noted however, that without society-centered agitation - explicit in the case of direct appeals, or implicit in the case of systems abuse by users - there would be little impetus for redefined programs.

It seems that society-centered demands are considered by the political state and may or may not then be submitted to the bureaucracy for program construction. As conclusions from Pal's UI studies indicate:

> The theoretical challenge is to understand how social and political forces are filtered through, deflected by, and directed by state authorities for their own purposes. There was ample evidence ... to show that politicians and bureaucrats were aware of and sensitive to such forces as the "public mood" and "organized pressures". But these people did not act simply as ciphers ...; they interpreted them, manipulated them, and if necessary

> rejected them as they saw fit in terms of their own interests.(48)

Pal's work in Canadian UI suggests that analysis of society-centered forces were of little value in explaining policies and programs as they have been implemented and adjusted. His work suggests rather, that an understanding of UI policies is better found in consideration of the actions and inter-actions of bureaus. However, programs associated with UI policy have been adjusted with the changing imperatives of Canadian social and state activities and values.

"What strategies do groups and classes adopt to influence political calculi and state capacity?"(49) As Pal explains, this is a different question than the pluralist challenge to interest groups in that "it begins with the assumption that there are internal state forces to which these groups must accomodate themselves".(50)

A question thus remains: is policy adjustment society or state initiated? and to what effect do the players act?

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(48) Ibid., p.177

(49) Ibid., p.178

(50) Ibid., p.178

This work will contribute to the data base that may be drawn on for an answer. Like UI, Industrial Relations affect both capital and labour, two of the most powerful actors in interest group \ society-centered evaluation. It impacts as well upon the general populace. Which of these will have the greatest influence over policy? Or, will policy diverge from their expressed desires? Chapters 3 and 4 will provide two case studies by which to evaluate these questions and the policy process behind them.

To set the stage for consideration of these questions, and ultimately our hypothesis, the second Chapter of this paper will involve both a review of key events in labour relations across the province and the country, and an examination of the legislation passed in response.

The third Chapter will entail a detailed inspection of the building trades industry in Alberta in light of Bill 53 - the Construction Industry Collective Bargaining Act. Interviews with key actors in the drafting of the Act will be used to supplement and enhance interpretation of events in this area. Analysis of those events will be undertaken to determine the likelihood of co-operation under the policy mechanism; Bill 53. We will find that the mechanism has been a failure, the implications of which will be reviewed in the final Chapter.

The technique used in Chapter 3 will also be used to develop an understanding of the events and philosophies leading up to and culminating in the 1986 Gainers strike, the topic of Chapter 4. We will find that government reaction to the strike situation, though informed by a pluralistic prescription in the form of the Labour Relations Review Committee, failed to result in government policy that would have a real effect on uncooperative utilitarian actors - such as Peter Pocklington.

And finally, the fifth and concluding Chapter will involve consideration of both Bills 53 and 60, as well as the opinions of the responsible Minister of Labour, employers and employers organizations, and the employees regulated by the Bills. We will demonstrate 1) that the Alberta government turned pluralistic methods to its own use, failing to implement them in policy, and 2) that society-centered analysis must be combined with state-centered analysis to provide us the explanatory methods that we seek when we consider the policy making process in Alberta's Industrial Relations environment.

Chapter 2

INDUSTRIAL RELATIONS IN ALBERTA

1900 - 1981

> "Under the common law inherited from Britain, ...persons organizing a union or calling a strike might well be charged with the criminal offence of 'conspiracy to restrain trade'."(51)

This Chapter will briefly review the evolution of Industrial Relations in Alberta.

We will see in this and following chapters that though ideas about Industrial Relations have changed since the time they were governed by the Combinations Acts of 1799 and 1800, strikers are still thrown in jail and that portions of the realm remain fraught with conflict and confrontation. Theories for policy development in the realm have yet to solve its problems.

Most early legislation dealing with employer-employee relations was drafted by federal governments interested primarily in the rapid development of Canada. The federal

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(51) Frank Kehoe, Maurice Archer., Canadian Industrial Relations,2nd ed., (20th Century Labour Publications, Oakville, 1980),p.5.1. The Combinations Acts of 1799 and 1800. These acts were not substantively repealed in Canada until the unanimous passage of the Trade Union Act of 1872 and the Criminal Law Amendment Act of the same year. Important to note however, is the fact that the latter acts applied only to the very few registered unions of the time therefore having little effect on most employer-employee relations. H.D.Woods., Labour Policy in Canada (2nd.ed.) (MacMillan of Canada, Toronto 1973), p.32., see also: Brian Burton, et al., "Labours Losing Battlegrounds" Alberta Report, February 10,1986,.p.19.

governments of the late 1800's and early 1900's acted to ensure as little time lost to labour strife as possible.(52) Thus, in 1907 when coal miners in Alberta struck for safer working conditions and an increase in wages, the federal government intervened to curtail what was turning into a long and bitter dispute. The Deputy Minister of Labour, W.L.Mackenzie King, already having gained a reputation in the field, was assigned to assess the situation in Alberta and bring it to an end.(53)

Affected by the coal miner's strike King drafted the Industrial Disputes Investigations Act (IDI) upon its conclusion. The Act allowed the Federal Minister of Labour to appoint a conciliation tribunal and restricted strikes and lockouts until a period after the tribunal recommendations were handed down. Section 6 of the Act placed almost all labour disputes under the discriminate jurisdiction of the Federal Minister. This authority, assumed under the IDI Act was founded in the Constitution Act of 1867, section 91; which allowed for the federal government to make laws "for the peace, order, and good government of Canada." Section 6 of the IDI:

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(52) Weiler., p.16

(53) Desmond Morton, Terry Copp., Working People, (Deneau and Greenberg Publishers Ltd.,1980),p.77

> 6) Whenever, under this Act, an application is made in due form for the appointment of a Board of Conciliation and Investigation, .. the Minister, whose decision for such purposes shall be final, shall, within 15 days from the date at which the appliction is received, establish such a Board under his hand and seal of office, if satisfied that the provisions of this Act apply."(54)

An act which stood for eighteen years as the primary federal tool for solving industrial disputes, the IDI was applied for 619 times and used 441 times with a 75 per cent success rate in avoiding work stoppages.(55) Approval for the act was short-lived. Provisions in the act restricting strike action until after the tribunal of employers, employees and government negotiators handed down its report worked against the few established unions. All too many times reports filed by IDI tribunals failed to address key issues such as wages or hours of work.(56)

In 1925, the Toronto Electric Commission appealed the jurisdiction of a tribunal established under the Act. The Judicial Committee of the Privy Council agreed with the Commission's argument that;

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(54) Industrial Disputes Investigations Act [1925] Edward VII C.20 Acts of the Parliament of the United Kingdom s.6

(55) Woods., pp.21-22.

(56) Ibid.,pp.88-90.

> The Act was not within the competence of the Parliament of Canada under the BNA Act, 1867. It clearly was in relation to property and civil rights in the Provinces, a subject reversed to the Provincial Legislatures by s.92, sub.s 13 and was not within any of the overriding powers of the Dominion Legislature specifically set out in s.91; the Act could not be justified under the general power in s.91 to make laws "for the peace, order, and good government of Canada", as it was not established that there existed in the matter any emergency which put the national life of Canada in unanticipated peril.(57)

Though the Federal Department of Labour no longer held exclusive jurisdiction in labour disputes, its Boards continued to rule. The provinces had not yet become actively involved in the legislative realm.

In 1938, Alberta passed its first Bill to deal with employer/employee relationships before hostilities; some-

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(57) Toronto Electric Commissions v Snider [1925] A.C.396 The Law Reports, House of Lords, Judicial Committee of the Privy Council p.396. For further discussion of the IDI Act, the Constitution Act of 1867 and the 1925 Toronto Electric Commission V Snider, Privy Council ruling, see: Laurel Sefton MacDowell., "The Formation of the Canadian Industrial Relations System During World War 2" in Twentieth Century Canada, ed. J.L.Granatstein et al., (McGraw-Hill Ryerson Ltd. Toronto 1986)., pp.202-203. Stephen G.Peitchinis., The Canadian Labour Market, (Oxford University Press, Toronto,1975),p.6 and H.A.Logan., State Intervention and Assistance in Collective Bargaining (University of Toronto Press, Toronto 1956), pp.3-10. The latter provides an excellent, succinct, background leading up to the Second World War.

thing relatively new to the Canadian labour environment and it is to Alberta that we now turn.

As elsewhere in Canada, Alberta's labour heritage was one of conflict. Employers and governments conscientiously applied the philosophy of unrestrained trade when it came to questions of employee organizations. United employees exercising their collective economic weight were considered to be restraining trade and employers reluctant to relinquish the custom of British common law resisted such activities fiercely.

Strong resistance to employee organization hampered but failed to stem union activity, even before legislation had been put in place to protect it. In fact, unions had formed inspite of the lack of legislative protection; or perhaps in lieu of it. A quick review of union activity in Alberta, from the turn of the century is in order to place legislative evolution into context. This review will only introduce Industrial Relations development in Alberta. For a thorough examination of that evolution the reader should refer to the noted texts, many of which are dedicated to that development.

Alberta: 1900-1981

The first workers to organize in Alberta were employees of the CPR and coal miners; both groups of employees were forced to organize in some manner to have their demands for back wages and safe working conditions heard.(58) However, with the expansion of Calgary and Edmonton at the turn of the century, skilled tradesmen were much in demand. By 1903, Locals of stonemasons had been formed in Calgary and Edmonton and "by 1913, barbers, bookbinders, cement workers, letter carriers, machinist's, musicians, stage employees...and tailors all had small locals in Calgary or Edmonton, and a few had locals in Lethbridge and Medicine Hat".(59) The fact is, many of these organizations were not covered by the Trade Union and Criminal Law Amendment Acts of 1872 and were, therefore, operating on shaky ground.

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(58) Alvin Finkel; interviewed by Richard De Candole for the Athabasca University Magazine,ed: Maxim Jean-Louis, "Special Labour Supplement",Vol.15, May 1987,p.36. Warren Caragata., "Alberta Labour: A Heritage Untold", Essays on the Political Economy of Alberta, ed: David Leadbeater (New Hogtown Press,Toronto,1984), pp.100-107.

(59) Ibid.,p.108. for a complete listing of locals in Alberta by 1918, see: Labour Organizations in Canada [1918] Department of Labour, Ottawa, pp.170-176

By 1918, labour activities in the west had developed to the point where the Federal government in Ottawa became highly concerned. Montreal corporation lawyer, C.H.Cahoun, sent by the federal goverment to study the roots of discontent, concluded that it was the result of Bolshevik agitation.(60) David Bercuson provides a brief explanation.

> All western workers were not radicals. Those who were did not become radical at once. The coal miners of Vancouver Island, the Crowsnest Pass, and Alberta and the hardrock miners of the British Columbia interior were the vanguard of radicalism in the west, founding it, nurturing it, and lending its spirit of revolt to other western workers. These miners early rejected reformism and swung behind Marxist political organizations, ... They also provided the most fertile ground in the west for doctrines of radical industrial unionism and syndicalism and were amongst the strongest supporters of the Industrial Workers of the World. The miners formed a large and cohesive group in British Columbia and they quickly overwhelmed, dominated, and greatly influenced the urban crafts and railroad lodges. ... In Alberta the urban crafts formed the Alberta Federation of Labour partly to offset the radical influence of the coal miners who dominated the labour movement in the south, but by 1918 the miners had become undisputed masters of the provincial labour movement.(61)

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(60) Caragata., p.117

(61) David Bercuson., "Labour Radicalism and the Western Industrial Frontier: 1897-1919" Twentieth Century Canada, ed. J.L.Granatstein et al., (McGraw-Hill Ryerson Ltd. Toronto 1986), p.154

The Industrial Workers of the World, (IWW) took root in Canada in 1906. By 1911 it claimed 10,000 Canadian members. By 1914 government reports listed its membership at 456. Though the IWW found rich soil in the poor working conditions of miners and unskilled labourers, the radical politics it represented were its downfall. In 1914, the IWW, "along with a list of foreign-speaking political groups, (were) declared unlawful organizations, and a penalty of from one to five years imprisonment was prescribed for anyone continuing in membership."(62)

Men involved in the IWW had little use for the "business unionism and craft moderation" of the American Federation of Labour and its Canadian affiliate, the Trades and Labour Council.(63) Similar sentiments were shared by those who became involved in the equally ill-fated One Big Union (OBU). "The reliance of the OBU is upon industrial rather than political action; and it wholly disavows any use of legislative lobbying (the techniques used by the relitively conservative AFL/TLC) for laws favourable to

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(62) Logan., p.299. Further discussion of the IWW is provided by Logan.,, pp.299-301. also see: Labour Organizations in Canada [1918] pp.31-37. for a discussion of the indictments, trials and a listing of the other political groups found to be illegal under the War Measures Act, Order in Council, dated September 24, 1918.

(63) Bercuson., p.148 see also: Logan., pp.301-316.

labour."(64) By Logan's account of the OBU movement, its zenith was realized in the Western Labour Conference in March of 1919 held in Calgary. Bercuson supports the account rendered by Logan, observing that "western radicalism reached the peak of its influence in 1919. ... large and representative bodies of western workers declared that their unions must be instruments of social change"; among them, the Alberta Federation of Labour.(65)

Taking an active role in the Western Labour Conference, the AFL put forward several resolutions among which were; a call for "a united labour political party", defeated, and an affirmation "that the Russians in socializing the means of production, had acted in the spirit of the AFL's constitution...(and) went on to express its 'full accord and sympathy with the aims and purposes of the Russian Bolshevik and German Spartenist revolutions'; adopted.(66)

By all accounts of the Conference, an unrepresentative minority were able to generate support for motions that were subject to sober second thought by many shortly

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(64) Logan p.301

(65) Bercuson., p.138

(66) Charles Lipton., The Trade Union Movement of Canada 1827-1959, (NC Press Ltd. Toronto,1973),.pp.189-219

thereafter.(67) One of the motions that failed to be implemented was the formation of the One Big Union. The decision to form the OBU, passed by delegates to the conference never managed to get off the resolutions page. Three short months after the conference, Winnipeg was embroiled in a city wide strike, and key agitators for the OBU movement ended up in jail.(68)

In May of 1919, employees of private industry in Winnipeg went on strike. Municipal workers - street-car drivers, firemen and policemen, provincial workers, and federal workers - postal workers and RCMP, and thousands of unemployed veterans joined together under the coordination of a central strike committee. For six weeks Winnipeg was governed by what amounted to a workers soviet, all essential services maintained at its behest. Unwilling to legitimate the committee by negotiating with it, the deposed governments succeeded in decapitating it by arresting seven of its leaders and ending it by violently suppressing a demonstration before Winnipeg City Hall on

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(67) Morton.,pp.117-119. see also: Lipton.,pp.189-219.

(68) Logan., p.308

June 17, 1919. Ten days later the strike committee returned control of the city and disbanded.(69)

Although the Winnipeg strike gained most of the attention - and notoriety - of that fateful year in Canada, its workers did not stand alone against the order of the day. All across the nation sympathy strikes of varying magnitude were staged. Alberta did not escape the turmoil, Calgary and Edmonton were both overcome by walkouts and strike committees which were able to hold sway for three weeks in a show of solidarity with the Winnipeg workers and soldiers.(70) At no time past nor since has Canada come so close to a workers revolution.

The combined forces of employers, governments, and 'special' militia regaining and consolidating control across the country turned out to be too much for the more radical leaders of the AFL and its affiliate - the labour Council of Calgary. "The moderates on the Labour Council were able to expel OBU supporters, ending radical control of the council",(71) though the One Big Union had not been involved in the Winnipeg general strike or sympathetic

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(69) For more information with which to supplement this brief review see: Kehoe and Archer., pp.5.3-5.4; Morton., pp.119-124. and logan., pp.316-320.

(70) Finkel., p.37

(71) Caragata., p.119

strikes in other locales. "The truth is that when the strike began, the OBU was not yet organized."(72) The expulsion of the more radical leaders of the trades councils in Alberta marked the end of an era of western radicalism. Though socialist tendencies were displayed after 1919, no return has since been made to "revolutionary unionism".

In 1938 the Alberta government, following the lead of the other Canadian provinces, passed legislation to address relations between employers and employees before hostilities arose. However, the mechanism "failed to enforce the law against non-recognition and other unfair practices."(73) In fact, it was not until 1944 that the province's legislation included any reference to bargaining in good faith.

> The Industrial Conciliation and Arbitration Act, being Chapter 280 of the Revised Statutes of Alberta, 1942 is hereby amended as to subsection (1) of section 2,-(a) by adding ...

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(72) Lipton., p.219

(73) Logan., p.10

> (a) 'Bargain collectively' means to negotiate in good faith with a view to the conclusion of a collective labour agreement ... and 'Collective Bargaining' shall have a similar meaning.(74)

The Act was also the first to recognize that acts by "a collective bargaining agency" in restraint of trade were not illegal.(75) How much an improvement in relations these changes actually made is questionable. Though collective bargaining was defined as negotiating in good faith, there is little to indicate that that definition was, or has been, given much attention by the courts (as we shall see, the Gainers dispute of 1986 indicates that even 40 years later, bargaining in good faith remains difficult to define or enforce).

In 1944 the federal government passed order-in-council P.C.1003. An order which "required employers to bargain in good faith with unions selected by their employees....(P.C.1003) based on the Wagner Act passed in the United States became the foundation of present day labour legislation."(76)

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(74) Industrial Conciliation and Arbitration Act, Statutes of Alberta C.69 s.2 ss.1(a) [1944]

(75) Ibid., s.4

(76) Caragata., pp.126-127

As Canada was still at war, P.C.1003 was implemented as the labour relations legislation of the country. Its importance cannot be overstated. Where strikes had previously taken place "over jurisdictional issues, recognition issues, and application or interpretation issues"; they were no longer legal.(77) Only in the area of contract negotiation were they allowed but even there, considerable restrictions were placed by compulsory conciliation mechanisms.

Alberta was slow to adopt P.C. 1003 as an example. In 1947, the government of Alberta passed the Alberta Labour Act. The Act was the most comprehensive to that date repealing The Hours of Work Act, The Male Minimum Wage Act, The Female Minimum Wage Act, The Labour Welfare Act, The Industrial Standards Act, and the Industrial Conciliation and Arbitration Act.

"The Alberta Labour Act came under the jurisdiction of the Department of Trade and Industry and the Board of Industrial Relations."(78) Under the Act, and reminiscent of the statutes of the IDI Act, the Board of Industrial Relations was given powers of wage determination, setting

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(77) Woods., p.93

(78) Labour Legislation Review Committee,pp.41-43.

and monitering safety regulations, dispute investigation and conciliation.(79) Should conciliation fail, a Board of Arbitration would be struck and no work disruptions would be legal until fourteen days after a vote had been conducted on the award.

In 1948 the Act was revised such that "the legality of a strike or lockout could be determined by a referal to the Supreme Court of Alberta."(80) Demonstrative of the changing face of Alberta's labour movement, "senior officials of the AFL endorsed the bill, and in 1950, the Federation president marked the change with a speech saying that labour and government should work together."(81)

From 1950 to 1987 labour legislation in Alberta evolved in an incremental fashion. Industrial relations in the province reflected, for the most part, the sentiment that cooperation would resolve conflict in the long run. As we have seen, such was not always the case.

The evolution of Alberta's labour movement included a period of radically confrontational attitudes. The passing of such attitudes ushered in an era of more conciliatory

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(79) Weiler., p.23

(80) Labour Legislation Review Committee Final Report,p.44

(81) Caragata.,p.129; see also: Finkel., p.37

leadership - leadership which observed that working with the government would be an effective strategy for labour. However that attitude may now be changing. Though rights have been given, little in the way of government support has been forthcoming to support those rights. Organized labour in Alberta seems to be reacting.

In 1983, members of the Alberta Federation of Labour elected Dave Werlin as their president. A self-proclaimed Communist, Werlin deals with the government and management in a confrontational manner.(82) Werlin is only one example of the growing discontent among Alberta's organized labour. Chapters 3 and 4 will provide evidence to indicate that his election is not an anomaly and that economic conditions in Alberta are placing increased stress on Industrial Relations in the province.

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(82) Linda Slobodian., "Making Alberta see Red" Western Report Vol.2 (17) May 18 1987 p.9

Changing Economic circumstances in Alberta, 1970-1982

In 1970, the population of Alberta stood at 1,595,000. By 1986 that total had jumped almost 60% to 2,384,700. Figure 2.1 illustrates the changes in population growth for the province, for each of the 16 years.

(insert Figure 2.1)

You will note that the graph peaks in 1981. This peak corresponds with the end of the OPEC cartel and a crash in world oil prices, linking Alberta's population growth closely to that sensitive commodity. There is no doubt that people were drawn to Alberta for jobs. With population soaring, from 1975 to 1981, unemployment was at its lowest, dropping from almost 6% in 1971 to an average of 4% from 1974 to 1981.

(insert Figure 2.2)

Figure 2.2 dramatically indicates the effect of the broken OPEC cartel on employment in the province. In just 2 years, 1981-1983, unemployment in the province jumped almost 3 fold from under 4% to almost 11%.

A glut on the oil market, the federal government's National Energy Program, relatively high labour costs and diminishing new oil reserves all combined to drive invest-

ment out of the province. Almost overnight, thousands of gainfully employed became jobless, skilled and unskilled queued together before unemployment offices looking for work or financial assistance. And to make matters worse, the entire nation - in fact, the entire western global economy - was in recession. There was nowhere for the jobless to go.

Chapter 3

THE CONSTRUCTION INDUSTRY IN CALGARY

> An important consideration in understanding the role of law in labour relations is the extent to which the process of law reform has a bearing on the degree of voluntary compliance that is attainable. ...In the area of labour-management relations, ...the attainment of legal goals depends upon a positive approach to the legislation by all those who are governed by it.(83)

Weiler's prescription for reform of labour legislation may be correct, though as he later notes, very difficult to achieve.

This Chapter will consider legislation which dealt with the construction industry and will compare it to Bill 53, which required that a master agreement be reached between the trades unions certified by its members and Construction Labour Relations - An Alberta Association; the employers bargaining association. We will review the opinions of those closest to the negotiations to determine whether or not the government's labour strategy was suc-

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(83) Weiler., p.45. see also: Woods., (1968) p.250

cessful in filling the pluralist prescription. Was a legal foundation created for a functioning relationship?

Bill 53 was criticized by the employers association as giving too much to the trades unions and cautiously welcomed by union representatives as a small, faltering step in a new direction. Labour Minister Ian Reid could have hoped for little more. Ken Wishart, Business Manager for the Bricklayers and Tilefitters, Local 2, observed that there was not an adequate legislative mechanism in place to deal with labour relations. Displaying his annoyance with what he considered to be half-hearted involvement, Wishart suggested that the government should either get completely involved or get out.(84)

With the construction industry, Reid faced perhaps his most difficult task for

> the variables are too many, too unpredictable, and too powerful to allow for peaceful evolution. It is a 'conflict-prone' industry. It has three built-in components of instability. These are the great oscillations or booms and depressions in the industry, the factor of technological change, and the mobility of the work-site.(85)

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(84) Ken Wishart, Business Manager; Bricklayers and Tilefitters; Local 2, interviewed December 8,1987.

(85) Woods., p.284

The Construction Industry Collective Bargaining Act (hereafter referred to as Bill 53) was drafted, to some extent, using examples set by Quebec, Manitoba, Ontario and Nova Scotia where "the role played by government has generally been one of promoting the trend toward regional or province-wide bargaining on a multi-union and employer's association basis".(86) The decision to use such an approach for legislation in the industry was a new one for an Alberta government. In the past, the construction industry was dealt with as simply one more part of the overall labour environment.

The Labour Relations Act,1973

In the mid-1970's rapid changes in the Alberta labour environment were sparked by the influx of billions of oil-based dollars. Consequent to the influx of capital, construction boomed. Figure 3.1 graphically represents the exponential increase in the value of building permits in the non-residential sector, increasing five fold in the six year span between 1975-1981.

(insert Figure 3.1)

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(86) Ibid.,p.285

The boom in the construction industry was accompanied by an increase in union membership. In fact "industry experts estimated that contractors employing unionized labour had captured 70-80% of the institutional, commercial and industrial new construction markets during 1975-1981."(87) Faced with a large increase in certification and a rapid increase in union membership, employers in the construction industry determined that it would be in their best interests to organize, and proceeded to do so under Division 4 of the Labour Relations Act. The employer's organization, Construction Labour Relations - an Alberta association (CLR) has "represented contractors at the vast majority of trade tables in Alberta...(since the 1970's), both as a voluntary association and as a registered employer's organization."(88)

Though bargaining in the construction industry became somewhat more coordinated than it had been in the past, a shortage of skilled labour resulted in wage and benefit

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(87) E.G.Fisher and Stephen Kushner., "Alberta's Construction Labour Relations During the Recent Downturn", Relations Industrielles.Vol.44,1986.p.780. For further data, see also, D. Leadbeater., "Capitalist Development in Alberta" in D.Leadbeater ed, Essays on the Political Economy of Alberta, Tables 1-6 and 1-7 pp.60-61. More data are in Statistics Canada. Corporation and Labour Unions Returns Act, Catalogue 71-202.

(88) Ibid.,p.780

package increases of over 100% over the nine year period, 1975-1984.(89) It is apparent that construction workers were riding the crest of the economic boom.

In the spring of 1982, sinking oil prices and rising interest rates caused the cancellation of the Cold Lake and Alsands megaprojects. The resultant tremors wrecked havoc on the Alberta economy, causing construction starts to steeply drop-off. As Table 3.1 clearly shows, Institutional, Commercial, and Industrial construction fell from a peak in 1982 of $3.34 billions in work performed to $2.43 billions one year later, a drop of almost 30%.

(insert Table 3.1)

Tied to collective agreements, many of which were not due to expire until April of 1984, contractors were caught in a bind. For most, attempts to renegotiate agreements were met by recalcitrant unions suspicious of any attempts to reduce their recent gains. "Bankruptcies, voluntary closures and downsizing of operations became commonplace."(90) The unemployment rate in the industry

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(89) The average gross wage for plumbers, electricians, sheet-metal workers, carpenters, ironworkers and labourers was $9.37 in 1975; in 1984 it was $21.33. The wage and benefit increases include net rate plus health and welfare plus pension plus statutory holiday pay plus vacation plus various supplementary funds. Ibid.,p.781

(90) Ibid.,p.784

skyrocketed almost overnight.

(insert Table 3.2)

Table 3.2 shows that from a seven year low of 5.1% in 1981, unemployment rose to 16.3% in one devastating year. And the dramatic increase in unemployment throughout the industry continued into 1983 and 1984, going as high as 30.3%. The industry was in a turmoil.(91)

Spin-offs and the 25-hour Lockout

Underbid by non-union contractors and unable to renegotiate collective agreements, many unionized contractors found themselves unable to compete. No longer could the relatively higher cost of unionized labour be passed on to the client. Unionized contractors had to find an alternative. They did. Under section 133 of the Labour Relations Act, employers were barred from operating more than one firm in the same business.

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(91) For more information on the period see: Allen Ponak.,"When boom goes bust - Lessons from Alberta" presented to the 33rd Annual Conference; Industrial Relations Centre, McGill University, and published in New Directions for Industrial Relations., (McGill University Press, Montreal,1985)p.25

section 133:

> On the application of a trade union or on its own motion when, in the opinion of the Board (the Alberta Labour Relations Board), associated or related activities or businesses, undertakings, or other activities are carried on under common control or direction by or through more than one corporation, partnership, person or association of persons, the Board may declare the corporations, partnerships, persons or associations of persons to be one employer for the purposes of this Act.(92)

Industry leaders undertook to overturn legislation making spin-off companies illegal. The lobby efforts of the contractors and their association were successful and in 1983, Bill 110, The Labour Relations Amendment Act was passed into law. Bill 110 exempted construction firms from section 133 of the previous Act thereby making spin-offs legal in the construction industry.

> 3) Section 133 is amended by renumbering it as section 133(1) and by adding the following after subsection (1):
>
> (2) This section does not apply to businesses, undertakings, or activities in the construction industry.(93)

However, this success was short-lived. Following a concerted lobbying effort by labour, the provincial government

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(92) Labour Relations Act [1973] s.133

(93) The Labour Relations Amendment Act [1983] s.3

decided to repeal the Bill and did so on November 13 of the following year.

On a second front, though section 133 of the Act appears to rule out the creation of subsidiary firms to carry on "associated or related activities", contracting companies proceeded to do so.

In a landmark decision, the Alberta Labour Relations Board (the Board) determined that the "unionized Edmonton firm, Stuart Olson Construction could legally operate a non-union firm."(94) Fisher succinctly sumarizes the Board's ruling.

> (In its ruling) the Board... decided that a formerly unionized construction firm, which had converted to a project management operation, no longer was covered by the collective agreement then in force (with the parent organization) and negotiated pursuant to a registration certificate. The restructured firm did not directly hire employees; instead it subcontracted all the work on the project it was managing. It, therefore, was not an employer of employees engaged in the trade and territory specified by that particular registration certificate.(95)

According to Vair Clendenning, then Secretary Treasurer of the Northern Alberta Building Trades Council,

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(94) Susan Deaton., "A blow against spin-offs", Alberta Report,December 12,1986, p.19

(95) Fisher., p.788

representing 17 construction unions, since the Stuart Olson decision, almost all construction firms began spin-off organizations.(96) The impact on unionized construction in Alberta was dramatic. From an estimated high of almost 90% in 1982, the share of the construction market held by unionized firms dropped to approximately 5% in 1987.

Unsuccessful in attempts to change legislation, contracting firms curcumvented it, but not without a fight from the unions affected. Clendenning claimed that the unions, well aware of the technique being employed by the contracting firms, were nonetheless powerless to appeal so long as the chairman of the Board refused to hear union cases. Leslie Young, then Labour Minister, had a different interpretation of the lack of appeals. Young suggested that it indicated that the unions had given up on the issue.(97) This circumstance changed with the appointment of Andrew Sims to the Chairman's position in 1985.

In 1985, the unions asked the Board to consider Emron Management Inc. to determine whether or not its relationship with Empire Iron Works Ltd. was in violation of section 133. The Board found that non-union Emron Manage-

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(96) Deaton., p.20. see also: Woods., p.257

(97) Ibid.,p.20

ment Inc, was indeed a spin-off of the unionized Empire Iron Works Ltd, the two only being separate on paper. In its ruling the Board determined that "they shared directors, office space, payroll facilities and contracts."(98) The Board concluded that Emron Management Inc. would be subject to the unionized parent firm's contract. But, rather than marking a new era in Board decisions, the Emron-Empire ruling turned out to be an anomaly due mostly to the casual attitude of the parent firm in its structuring of its spin-off. Edmonton labour lawyer David Ross suggests that the Emron ruling is "essentially meaningless" as almost all general contracting firms are considerably more careful when they undertake to avoid section 133.(99) And as Deaton observes;

> Despite the (Emron) ruling, unions expect to have continued difficulty bringing new cases before the Board, because without access to internal company files the links between parent and spin-off will remain hidden.(100)

And the contractors did not stop with the use of spin-offs to thwart the unions.

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(98) Ibid.,

(99) Ibid.,

(100) Ibid., see also: Andrew Nikikoruk., "The agony of Edmonton", Saturday Night., August, 1987., pp.38-40.

> During the 1980's a series of rulings by the Labour Relations Board reinterpreted Alberta's labour code. ...Aimed at bolstering the construction industry, these rulings made twenty-five hour lockouts ...legal. The twenty-five hour lockout allows an employer to shut out his unionized employees and hire new employees on conditions of his choosing.(101)

The rulings alluded to by Nikikoruk did not so much make twenty-five hour lockouts legal - the Board does not have that power - rather those rulings determined that an employers decision to lockout his employees upon the termination of their collective agreement was not contravening legislative guidelines.

Prior to 1982-83, expired collective agreements customarily provided the framework for employee-employer relationships until a new agreement could be devised. However, faced with severe economic pressures, and unions unwilling to make the sacrifices they claimed were necessary for survival, unionized employers decided to break with custom and exercise their legal right to lockout. Section 57 of the Labour Relations Act stated that:

> When a registered employer's organization and a trade union bargain collectively and a collective agreement between an employer ...and the trade union is in force, that collective agreement terminates

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(101) Nikikoruk., p.38

> (b) on the date a strike or lockout commences in accordance with this Act(102)

Though it was illegal for employers to fire employees to re-hire others - section 49 (2) "No person ceases to be an employee within the meaning of this Part by reason only of his ceasing to work as a result of a lockout or strike" - employers could hire replacement workers to work for wages and or benefits much lower than the regular employees would be willing to accept. So, in fact, the CLA employers devised a successful strategy to meet the requirements of the legislation, and by hiring replacement workers, were able to effectively break union control. As a frustrated Dave Werlin, Alberta Federation of Labour President, admitted, "Yes, it's better to work for $8.00 an hour doing a $16.00 an hour job than it is to not work at all."(103)

In the Final Report of the Labour Legislation Review Committee, published in February of 1987, the committee had this to say about the twenty-five hour lockout strategy.

> The Trade Union movement views the '25 hour lockout' as an assault on trade unions, while the construction employers argue that termination of the agreements was necessary for economic survival in competition with non-unionized companies in a rapidly shrinking market.

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(102) Labour Relations Act [1973] s.57

(103) Dave Werlin, interviewed by Barry Johnstone in Athabasca University Magazine,Vol.15, May 1987.p.18

> The '25 hour lockout' was a perceived concept that had no basis in legislation, but was rather a method to confirm that an agreement had in fact terminated. The major changes that are proposed to the collective bargaining process, as well as the commitment to enhance the information base of the participants, are measures which the Committee firmly believes will negate the use of this type of drastic measure by either party in the future.(104)

The Committee had this to say about the effects of section 133; spin-offs.

> The spin-off section of the Alberta Labour Relations Act is not significantly different from that which is in place in other jurisdictions throughout Canada. The effects of this provision have, however, had the greatest impact in Alberta due to the massive downsizing that has taken place in the construction industry.
>
> The Committee is optimistic that the recommendations contained within this report will serve to create an atmosphere for constructive labour relations in the future.
>
> Recommendations:
>
> That the organizational structures of employers and trade unions in the construction industry be put in balance.
>
> That the Minister of Labour advise the parties in the construction industry that unless they mutually develop a bargaining structure by May 1,1987 a structure be established. Further, that the bargaining

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(104) Labour Legislation Review Committee, p.101

> structure be Province wide and contain a majority rule principle.(105)

Is the Committee's optimism well founded?

Bill 53: Construction Industry Collective Bargaining Act, 1987

Proclaimed in the spring of 1987, Bill 53 was a radical departure from past labour legislation in Alberta. Giving the Minister of Labour sweeping powers, and introducing for the first time the concept of a master agreement for the construction industry, Bill 53 received mixed reviews. It is the opinion of Neil Tidsbury, President of the CLR, that the government should establish a framework for labour relations then remain removed.(106) He was critical of section 8) of the bill which stated that:

> If the bargaining federations, after meeting and bargaining in the manner prescribed by the Minister are unable to agree on the terms and conditions to be included in the master construction agreement by September 15,1987 (extended to December 15, 1987, and

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(105) Ibid.,pp.101-102.

(106) Neil Tidsbury, interviewed by author, December 1987.

> again to January 31, 1988) or any later date prescribed by the Minister, the Minister may refer the dispute to the construction disputes resolution tribunal(107)

On the other hand, Martin Piper and Phillip Hanbrook, Business Representatives of the Calgary and District Council of the United Brotherhood of Carpenters and Joiners of America, indicated a very real need for such Ministerial intervention. December 1987 almost past, the Business agents claimed that though thirteen meetings had been held between the unions and the CLR, no progress had been made. According to Hanbrook, "They (the CLR) had no intention of bargaining whatsover."(108) According to Hanbrook and Piper, the likelihood of reaching an agreement without government intervention appeared quite slim; "They're turning around and standing at the bargaining table and saying 'Hey, you guys need an agreement and we don't'."

Despite his low expectations, Hanbrook observed that "I don't think anything more can be done to 53." This observation is important. It demonstrated that - at least for one group involved in the negotiations - Reid's legislation filled the pluralist prescription that success-

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(107) Construction Industry Collective Bargaining Act [1987] s.8

(108) Phillip Hanbrook, interviewed with Martin Piper by author, December 1987.

ful law reform must have the "voluntary compliance" of those involved. Unfortunately Hanbrook's conviction was not shared by the employer's association, nor even by all of the other unions involved in the process.

Forced into the negotiations, under section 3: subsection (a) "This Act applies to all parties that are subject to an existing obligation to bargain collectively with a trade union listed in the Schedule..." - the Electrical Contractors Association and the electricians unions appealed the legislation to the Supreme Court of Canada. And the Labour Legislation Review Committee recorded the following question and response regarding the construction industry.

> Should Alberta introduce a separate statute for the construction industry?
>
> Employers and employers' organizations oppose by a large majority the need for a separate statute for the construction industry. However, they suggest that its unique nature should be addressed within the Labour Relations Act.
>
> Unions and labour organizations also oppose by a large majority the need for a separate statute for the construction industry. Only one union supported a separate construction industry statute.
>
> Professionals and professional organizations also oppose by a majority the need for a separate statute for the construction industry.

> Individuals also oppose by a large majority the need for a separate statute for the construction industry.(109)

Yet the government proceeded with the enabling legislation.

In spite of the presentations made to the Labour Legislation Review Committee, with the exception of the CLR and the electrical faction, most were willing to give it a chance. Jim Aecheson, President of the Building Trades Council, noted that times have to change. There were similar agreements in other provinces, so in recognition of these facts, some form of multi-lateral package or agreement was acceptable. However, its objective must be viewed from a reasonable perspective. Aecheson went on to note that the CLR sees the agreement primarily as a method to stop wage-spiralling.(110) "The philosophy that the labour movement is approaching this with is founded in the need for a reasonable wage - not only across the sector - but across the country. Unions must keep pace with the recognized realities of the bargaining relationship, confrontations need not occur." Both sides must recognize that "society as a whole suffers" in a confrontation.

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(109) Labour Legislation Review Committee, p.78

(110) wage-spiralling: a union technique of playing un-associated employers off against each other to obtain the most favourable contract.

There is a "need for a change in attitudes on both sides of the issue."(111)

Support for the master agreement did not only lie with those who stood to gain. The Bricklayers and Tilefitters of Local 2 supported the agreement negotiations even though they might have lost by them. They were one of the very few locals involved in the negotiations that already had a collective agreement. If a master agreement was reached, the Bricklayers and Tilefitters active agreement would have been forfeit, according to section 12: subsection (3).

> ...where a collective agreement or a settlement is in force with respect to employment in the construction industry, the terms of that collective agreement or settlement shall continue to apply according to its terms until the master construction agreement is concluded, whereupon that collective agreement or settlement becomes void.(112)

Yet Ken Wishart, Business Manager for Local 2, responded that his union was "one of the few in favour" of the concept. Since others among the trades were being taken advantage of there was a "moral obligation to do so."(113) However, Wishart was critical of the negotiations process.

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(111) Jim Aecheson, interviewed by author, December 1987.

(112) Construction Industry Collective Bargaining Act [1987] s.12 ss.3

(113) Wishart.,

The "subsidiary set-up doesn't make sense," all of the trades being involved in bargaining each others respective subsidiary agreements.

As the negotiations process faltered, groups within the industry speculated about the government's next step. If a negotiated agreement could not be reached, would the Minister step in and enforce his option under section 8: referral of dispute to tribunal? Phil Hanbrook observed that "any government shies away from enforcing arbitration."(114) Yet, it was possible that Ian Reid would intervene if he could not find an alternate solution to what appeared to be a stalemate. Certainly Tidsbury's comment that he preferred the old Labour Minister (Leslie Young) to the current Minister because Young knew enough to stay out of the process, indicated that Reid may become involved. Admitted Martin Piper, "He'd (Reid) almost come over as if he has a concern."(115)

Over four months after Piper's admission, the master construction agreement remained a topic of acrimonious debate between the contractors and the trades unions. On March 29,1988, Reid announced that he would not intervene

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(114) Hanbrook.,

(115) Piper.,

in the negotiations, blaming "entrenched baggage" from past experiences as the cause for the year long delay.(116)

Conclusion

It appears that unless the contractors and their association decide that they want to make a real attempt to reach an agreement with the unions, the intent of Bill 53 will be lost.

The irascible nature of relations in the construction industry have proven too much for a simple legislative mechanism to calm, regardless of the intentions of legislators.

> We're trying to get people to look on each other as having a common interest. ... We're trying to get them to realize that they have more to gain from communication and cooperation rather than from confrontation, ... and to have legislation that will facilitate and encourage that. ... I suppose that in initiating (that process) you are being interventionary (however)... the end result should (provide better relations). ... We won't be presenting answers; we'll be getting people to talk to each other.(117)

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(116) Calgary Herald, "Reid won't push talks", March 30,1988

(117) Ian Reid, Minister of Labour, Alberta; interviewed by author, January 1988

The problems with Bill 53 could have been predicted by taking account of the sentiments of those regulated by it, at its inception. As you will recall from Woods' and Weiler's pluralist method of labour policy analysis, legislation requires the active support of those it will be regulating. The recommendations submitted to the Labour Legislation Review Committee hearings almost unanimously vetoed the idea of separate legislation for the construction industry. Yet, the government proceeded with the enabling legislation.

The case of the construction industry in Alberta clearly demonstrates that the best intentions of legislators are not enough. Is it enough, then, for mechanisms such as 53 to be put in place, or must the government take an active, interventionary role? We will pursue these questions in our concluding Chapter but at this point we will turn our attention to a second case study of conflict in Alberta's Industrial Relations, one which also attracted active government intervention; the Gainers strike of 1986.

Chapter 4

THE GAINERS STRIKE

> (During a visit to Lethbridge in September of 1985) Julian Koziak and Don Getty said that there would be a review of the Labour legislation of the province. ...(In) late May of 1986... I reiterated that there would be a thorough review of the... Employment Standards Act and the Labour Relations Act. The media didn't pick up the matter. (The legislative review) had nothing to do with any particular disputes.(118)
>
> - Ian Reid
> Minister of Labour
> Alberta

On August 1 of 1986, the Alberta government launched a public review of its labour legislation. As a result of this review, the government drafted a new labour code, Bill 60, which was slotted for consideration in the Spring 1988 legislative session. Although there may be dispute over the reasons for undertaking the review, it is clear that the strike at the Gainer's meat processing plant in Edmonton from June 1st to December 14, 1986 raised issues that became central in the legislation review process.

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(118) Ian Reid, interviewed by author January 1988

In this Chapter I will explore in detail the causes of the Gainer's strike, the major events which kept the strike at the fore of the provincial political agenda, and the manner in which the strike was resolved. This will be followed by an examination of the recommendations of the Labour Legislation Review Committee as well as the major relevant proposals contained within Bill 60.

The Gainers Dispute 1986

On June 1st, national attention was drawn to Edmonton by reports of violence on a picket line outside of the Gainers meat processing facility. In spite of court orders, police presence and hundreds of arrests, the violence continued. What could be the cause of such behaviour - such apparently flagrant disrespect for law and order? To understand the disruptive nature of the strike at Gainers we must review events leading to the collective bargaining process within the plant and across the industry in 1984.

The collective agreement between Gainers and Local 280 P of the United Food and Commercial Workers expired on June 1 1984. Starting wage under the 1982-84 agreement had been set at $11.99, and included a pension plan, vision care, a dental plan and various and sundry other benefits common to

the period of economic expansion in the province and across the industry. Prior to the expiration of the 1982-84 collective agreements, national bargaining had been undertaken in the industry. The proccess was disrupted in 1984 by Burns of Alberta, and shortly thereafter, by Gainers.

Disruption of the industry-wide process resulted in rather large disparities between collective agreements in the industry. Though Gainers and Local 280 P were able to avoid a strike or lockout in 1984, it was to a large extent due to significant concessions made on the part of the union. The starting wage in 1982 of $11.99 was reduced to $7.00 and all benefits were lost to new employees, ultimately affecting 300. The remaining 780 employees gave up their vision care and dental plans.(119) The decision to make such large concessions rather than to go on strike was in no small degree influenced by the economic conditions of the province at that time. With an unemployment rate of about 10% across the province and close to 12% in the city of Edmonton, there was a large pool of potential replacement employees for Gainers to draw from should a strike

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(119) Alexander Dubensky, "Recommendations of the Disputes Inquiry Board", tabled July 9,1986.p.5

occur.(120) And union solidarity could not be depended upon to keep replacement workers out of the plant.

A survey of Albertans conducted in 1984 revealed that a majority favoured an employers right to hire replacement workers: 50.8% were in favour, 40% were opposed, and the remaining 9% were either neutral or held no opinion.(121) There could be no better evidence of this pressure than the hundreds of unemployed queued before the plant gates in response to a Gainers advertisement indicating work available when the 1982-84 contract expired.

(insert Table 4.1)

Local 280 P's decision to make concessions was not repeated uniformly across the industry. Canada Packers, for example, was struck by its union. An agreement reached after a 6 week strike called for a roll-back in the starting wage from $11.99 to $9.00 but maintained all other

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(120) Nikikoruk., p.37

(121) 1984 Canadian National Election Study. The question posed: "During a strike, management should not be allowed to hire workers to take the place of strikers." The study was funded by SSHRC, and the data were made available by the ICPSR. The original collectors of the data, SSHRC, and the Archive bear no responsibility for the analyses and interpretation presented here.

benefits.(122) At the other end of the scale, the much smaller Lakeside Packers, based in Brooks Alberta, was struck by its 89 member union, Local 740 P of the UFCW. Refusing to accept wage-cuts of $3.00 to $4.00 an hour, the union to this day remains locked out of the plant, its jobs taken over by replacement workers for $9.00.(123) In light of these examples, it is difficult to say whether or not local 280 P made the correct decision to give concessions to Gainers. If the concessions were made by the union in the expectation that it would lead to "labour-management harmony", or that the concessions would be only temporary and quickly recovered in subsequent agreements, they were soon to be disappointed. As the inquiry into the Gainers' dispute found, the concessions led to a further deterioration in labour-management relations:

> The administration of the 1984-86 contract by Management left a great deal to be desired. ... Management was often insensitive to the feelings and wishes of the employees. It was production at all costs. ... The Management did not in any way show its appreciation for the concessions given by the employees.(124)

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(122) Dubensky., p.3

(123) Calgary Herald, "Strikers vow to pursue their beef", June 2,1986. Lakeside Packers plant manager, interviewed by author, Sept. 13, 1989. (The manager wished to remain anonomous.)

(124) Dubensky., p.5

Had the 1984 concessions harmonized labour-management relations within Gainers, then the 1986 negotiations may have been conducted within an environment of trust and respect. If the concessions had been made equally across the board at all meat packing facilities in Canada, they might have been easier to bear. Neither of these happened. As the Inquiry suggested, there was a growing perception on the part of Local 280 P that they were falling behind other meat packers, and furthermore there appeared to be little if any recognition of this wage sacrifice on the part of management. The bitterness and resentment engendered, when confronted with an apparently intrasingent management, was to be manifest in persistent and often violent incidents on the picket line.(125)

June 1,1986 - the strike

The 1984-86 contract between Gainers and Local 280 P ended on May 31, 1986. The company had not approached the bargaining table nor had it submitted an offer to the union.(126) However, "three weeks before the strike dead-

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(125) Ibid.,

(126) Edward Seymour., "They Can't jail the strike", Canadian Labour,October,1986.,p.16. see also: Jim Selby., "Pigs and Packing houses: Peter Pocklington, the Police and the Gainers' strike" Canadian Dimension September-October,1986,p.5

line (of June 1st), the company placed advertisments for" replacement workers.(127) This action was not unique to the Gainers situation. A second Alberta meat-packing facility, Fletchers, in Red Deer, also had its collective agreement expire on May 31st and it too advertised for replacement workers. "We had to turn away applicants. We won't have any problem in this economy finding employees," observed Gary MacMillan, Fletchers' president.(128)

In the two years covered by the 1984-86 contract, economic conditions in the province had not improved; unemployment remained high. Fletchers had borrowed a page from the 1984 Gainers strategy book, both employers were preparing to continue operations through a pending strike. And there was little doubt that this time there would be a strike at Gainers at least, as no negotiations had been undertaken. Fletchers too, appeared bound for

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(127) Jim Selby., p.5 see also: Jim Selby., "Alberta's Legal Scabs" Our Times,Vol.5 August,1986,p.8

(128) Calgary Herald, "Meat plant strikes turn ugly", June 3,1986

confrontation as its offer of a wage increase over two years of 5% for those making $12.09 (140 of its 420 workers), 12.7% for those making $8.09, and 20% for those making $7.50, was turned down by the union.(129)

The unions of each plant demanded wage and benefit parity with Canada Packers which had recently settled at a starting rate of $9.38 with all benefits still intact. The Gainers union "advised that if they regained what was given up in 1982 plus the gains made in the Canada Packers settlement in 1986 it would be an increase of 19%-20% in the first year."(130) One expert observor, Robert Joyce, former chief negotiator for Canada Packers, suggested that the demands by the Alberta unions were not out of line, that they should be phased in over the life of the contract, and noted as well "that Canada Packers always led the way in concluding collective agreements."(131) Nonetheless, on June 1, the strikes began.

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(129) Globe and Mail, "Court limits picketing at meat-packing plant", June 3,1986. and Calgary Herald, "Meat plant strikes turn ugly" June 3,1986

(130) Dubensky., p.5 (note that Dubensky refers to the 1982 concessions made by the union. It is likely that this was a typographical error as the concessions to which he is referring were made in 1984.)

(131) Ibid., pp.6-7.

"Defying a court injunction limiting the number of pickets to 42" (six at each gate), hundreds of Local 280 P members, and supporters peacefully picketed the plant on June 1.(132) "The trouble began ... (when) Pocklington began busing in hundreds of workers to keep the plant running."(133) Chief superintendent Robert Claney of the Edmonton police and 28 year veteran of the force, recalls that first day: "When the bus (carrying replacement workers) reached the front gate the crowd, well-mannered until then, went berserk." Claney was almost run over in the ensuing melee. "And then everything went downhill from there. Every day was a major confrontation".(134) Indeed there were major confrontations each day.

On the first day of the strike, three men were arrested outside of the Gainers facility, with charges ranging from mischief to assaulting police. However, the strikers were successful in keeping the replacement workers from entering the plant the first two days. They were not to repeat that success.

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(132) Kerry Diotte., "Pocklington's Showdown" Macleans Junel6,1986,p.15 The court order was placed by Justice John Agries of Court of Queen's Bench. Globe and Mail, "Courts limit picketing at meat-packing plant", June 3,1986

(133) Ibid.,

(134) Nikikoruk., p.37

On the third day of the strike, 125 strikers were arrested outside Gainers and charged with "civil contempt" in breach of the court injunction limiting picketing to 4 per gate. The charge carried with it a maximum jail term of 2-3 years, although about half of those charged were never brought to court and most of those that were, were thrown out.(135) Jim Selby, Alberta Federation of Labour (AFL) research director, was one of those arrested and briefly detained. According to Selby, while in detention he and the others were informed by the police that should they be arrested a second time in violation of the court order, they would be charged with "criminal contempt", a charge which carried a possible 5-year incarceration. Detainees were then informed that they would be free to go if they signed a promise to undertake to be upstanding citizens.

On the fourth day of the strike, attention turned to Fletchers' Red Deer plant as "three workers were sent to hospital with broken legs, lacerations, and bruises suffered on the picket line ... when a bus carrying non-union workers" struck a barricade, knocking it into the strikers. "Calm returned ... after management stopped

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(135) Jim Selby, interviewed by author, March 1988. Globe and Mail, "Picket-line violence" June 4,1986

operations and issued a statement asking non-union workers and farmers not to make further attempts to enter the facility."(136)

As the confrontation in Red Deer was shocked to silence, the owner of Gainers, Peter Pocklington, took to the CBC airwaves to attack the Edmonton strikers. In a twenty minute interview, Pocklington told his striking workers that if any of them wished to re-apply for their jobs at a "market-value wage" he would negotiate with them on a one-to-one basis. He refused to deal with the "mob-ruled union" and said that if he signed another agreement it would contain "a system of incentives. The harder you work the more money you get."(137) Of course,

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(136) Globe and Mail, "Vow to keep Gainers plant open jeered by workers on picket lines", June 5,1986

(137) Ibid., market-value wage: Wages reflect and are subject to market forces. Thus, if there are people willing to work for $4.00 an hour there should be no binding contract forcing an employer to pay a higher wage. Michael Walker, Director of the Vancouver based Fraser Institute, offers an explanation. "Because so many men and women are desperate for work, organized labour's ability to sell and control its only commodity, manpower, has been markedly undermined." Tom Fennell with Susan Deaton., p.17. "The fact there is surplus labour fits into Peter Pocklington's perception of how labour works" observed Donald Aitkens, secretary treasurer of the AFL. "He feels people should compete against each other". Globe and Mail, "Lack of union clout, jobless too cited as factors in Alberta strikes", June 7,1986.

these comments served only to create more trouble on the picket line.

Unlike the first day of the strike when only about 50 police were on hand, on the fourth day close to a third of the 1,000 member Edmonton force was on hand. Four arrests were made.(138) Don Getty, Premier of the province observed that the provinces labour laws could not be blamed for the violence and arrests on the line, saying that "One or two circumstances don't necessarily mean the legislation is out of balance"; a comment he was to contradict soon thereafter.(139)

Peace on the Fletchers line soon ended as 96 were arrested the very next day. And in Edmonton, 108 were arrested to make way for buses entering the plant, among those, John Ventura, President of Local 280 P. Ventura was arrested after he attempted to send the strikers home and, meeting rank-and-file rebellion, joined them instead. He had been convinced that if the pickets came down, negotiations would be undertaken by the company. The fact that his assurances to the rank-and-file fell on deaf ears demonstrates the degree of distrust felt by the strikers.

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(138) Ibid.,

(139) Ibid.,

They shouted him down crying, "No sellout, close the plant gate, then we'll go home."(140) It is evident from the cries of the strikers that replacement workers were the first issue with them; that so long as their jobs were being done by someone else, they would not talk about anything else. An impasse was quickly developing as Peter Pocklington returned to the air waves to assert that he would not submit the dispute to arbitration, and would "never have another collective agreement with anyone." He also observed that the replacement workers were "hungry people (who) learned quickly".(141)

It appears quite evident that Pocklington's goal was not just to roll-back union demands, but rather to remove the union from the plant. His public comments and his espoused belief in the market-value wage can lead to no other conclusion. His own observation that perhaps small business might no longer be cowed by unions if they began thinking; "if Peter can withstand the total onslaught of the Canadian labour movement, I can sure make a fight for what I feel is right in my business" - indicates that Pocklington believed he had the resources, the nerve, and -

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(140) Globe and Mail, "Talks set in strike at Alberta meat plant", June 6,1986

(141) Ibid., Selby., p.5. Nikikoruk., p.37. Selby., p.5

most importantly - the right economic conditions, to set an example for the nation.(142)

Unfortunately for Pocklington, his philosophy was not shared by those in power in the government. "I don't think he (Pocklington) has a great deal of sympathy" observed Premier Don Getty. "There are many enlightened employers who would never have allowed this kind of thing to happen."(143) Even those for whom Pocklington claimed to be fighting, turned against him. Donald Horigan, president of the 6,000 member Canadian Organization of Small Business noted that "He has tarred small business with the same brush. He is making us all look bad."(144)

Six days into the strike, James Robb, University of Alberta labour-law and labour relations specialist observed that

> this dispute is no longer over a new contract. Technically these pickets are still employees, but the reality is that when buses are loaded with non-union workers on the first day of the strike its their jobs that are at stake.(145)

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(142) Nikikoruk., p.39

(143) Fennell., "Pocklington may win: but even business is turning against him" p.21

(144) Ibid.,

(145) Globe and Mail, June 7,1986

According to Alberta's labour law, James Robb appears to be right in his observation that the pickets were still employees. Under Division 2: Unfair Practices, section 137 3)

> No employer ... shall
> (a) refuse to employ or to continue to employ any person or discriminate against any person in regard to employment or any term or condition of employment because the person
> vi) has participated in a strike that is permitted by this Act or exercised any right under this Act.(146)

Pocklington did not recognize the legislation. He refused to recognize the strikers as employees and on the sixth day of the strike 23 more strikers were arrested which cleared a path for 6 buses of replacement workers to enter the plant.(147) That same day, Premier Getty announced that there was a problem with the labour laws and that they would be reviewed.(148)

Over the next few days, altercations on the line became fewer and further between. On June 10, the tenth

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(146) Labour Relations Act, 1973

(147) Globe and Mail, "Getty urged to take active role in ending meat-plant walkouts", June 7,1986

(148) Ibid.,

day of the strike, only 12 were arrested.(149) It should be noted that not all those arrested during the strike were members of the striking unions. Among those arrested were leaders of the Alberta labour movement, and citizens of all ages; from fifteen-year-olds to a seventy-five year old woman.(150) Meanwhile, public support was quickly moving to the side of the striking Gainers workers.(151)

Public support for the Gainers strikers was demonstrated on Saturday, June 8th as 3,500 people marched peacefully on the plant. And one week into the strike, IGA, Safeway, and Co-Op grocery stores stopped buying Gainers products, an indication that they were losing business to the AFL boycott placed on those products the second day of the strike.(152) Even the Globe and Mail was moved to an editorial comment by the 10th day of the strike. Critical of Alberta's labour legislation, the

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(149) Globe and Mail, "Meat Inspectors told to cross the line", June 10,1986

(150) Nikikoruk., p.37

(151) The Fletchers workers were sympathized with as well, but their battle was not covered as much in the press and events in Red Deer failed to draw as much attention as events in the provincial capital. This, combined with the high-profile, antagonistic attitude of Peter Pocklington centered attention on Gainers.

(152) Globe and Mail,"Growing support buoys up strikers at packing plant", June 9,1986. and Calgary Herald, June 3,1986.

editorial noted that;

> In Alberta, replacement workers hired to keep the plants open are seen as more than strike-breakers; they are seen as job-takers. ... surely laws should recognize the essential legitimacy of strikes - however regretable they are - within reasonable limits. To withdraw job security just as a strike begins undermines the collective bargaining process and incites unusual animosity if a strike occurs.(153)

And on June 12, the opening of the Legislature provided the stage for a demonstration of 8,000-10,000 Albertans from all walks of life, critical of the province's labour legislation and the government's failure to deal effectively with the Gainers dispute.(154)

It appeared that Pocklington's position was not nearly so stable as he originally expected that it would be. However, he was undetered. During the first two weeks of the strike, realizing that his replacement workers were bearing the brunt of the striking employee's wrath on the picket line, Pocklington promised that anyone that crossed the line would be guaranteed jobs even if it meant that former employees would lose theirs. Douglas Ford, chief executive officer to Pocklington commented that about 400

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(153) Globe and Mail, "Anatomy of a strike", June 10,1986

(154) Selby., p.5. Globe and Mail, June 9,1986

replacement workers would "probably be kept on".(155) As Ford was later to recount; "we (promised that) we would do all that we could to assure them (the replacement workers) positions ... especially with the physical violence on the line."(156)

Public support appeared to be with the strikers, and incidents of violence were down on the picket line, but these factors did little to help settle the strike. In fact, in an ironic decision by the Federal government, the relative peace on the picket line resulted in federal meat inspectors being ordered to cross the picket line. On June 9, Federal Labour Minister Bill McKnight said that the inspectors no longer faced the hazard of being "attacked by striking workers".(157)

Gainers was now truly back in business. And as provincial Labour Minister Ian Reid attempted to get the company and the union to the bargaining table, Gainers was

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(155) Ibid.,

(156) Douglas Ford, interviewed by the author, February, 1988

(157) Globe and Mail, "Meat inspectors told to cross picket lines", June 10,1986

applying for a second court injunction to remove all picketing from its site.(158)

Reid's efforts proved fruitless. Though the company did make an offer to the union late in the evening of June 10, it was immediately rejected by the union as failing to address any of the issues. Mr.Ponting, Gainers' chief negotiator said that there were certainly not any plans for another company offer or for future negotiations.(159) The same day, Fletchers Chairman Hugh Horner was quoted as saying that "Fletchers' values its employees and wants to distance itself from the approach taken by Gainers."(160) Within four days, Fletchers settled its strike on terms comparable to the Canada Packers settlement.(161) The Gainers strike bore on.

Even as Gainers made its offer to the union, Justice J.C.Cavanough granted an injunction which effectively broke the picket lines.(162)

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(158) Ibid.,

(159) Globe and Mail, "Union assails Gainers offer as "what-ifs"", June 11,1986

(160) Ibid.,

(161) Dubensky., pp.10-11.

(162) Rici Lake., "The Battle of 66th street", This Magazine, October-November,1986 p.10. and Nikikoruk p.38

> The injunction the second week of the strike prohibited any citizen of Canada except registered UFCW (United Food and Commercial Workers) Local 280 P members ... from ... inhabiting ... (not only plant grounds but) the vacant lot across the street that the union leased for its strike trailer. Congregations of more than 3 people are illegal. The injunction is being challenged as a contravention of Canada's Charter of Human Rights by ... (many) as well as the Edmonton Trial Lawyers Association."(163)

Sheila Greckol, representing the legal interests of a coalition of church, labour, and social action groups, noted that

> It is clear the court has the power to enjoin unlawful activities by strikers at plant sites; however, it would appear the court has exceeded its power in creating such broad restrictions, such as the prohibited zone, that bear no reasonable relationship to the object of preventing unlawful acts by strikers.(164)

The injunction was not everything the company had requested but in ending the violence, it effectively removed the strike from the front pages of the news for almost 6 months.

On June 11, Premier Getty appointed Alexander Dubensky as Chairman and sole member of a Disputes Inquiry Board

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(163) Jim Selby., p.5. see also: Rici Lake., "The Battle of 66th Street" This Magazine, October-November, 1986., p.10

(164) Rici Lake., p.10

(DIB). According to Alberta's labour legislation, sections 93 through 104, it was within the powers of the Minister of Labour or the Premier to appoint such a Board and that Board shall have power to call before it witnesses, demand documentation and evidence and make recommendations for settlement. The Board had no power to enforce its recommended settlement.

During the Board hearings, it became evident that Pocklington had acted unilaterally to cancel the pension plan and had undertaken to remove a $10 million surplus. Under the labour law, it was not necessary for the employer to inform the union of such a decision. Thus began a fight by the union to have the plan reinstated, a fight which was to last 5 1/2 months and cost the union $10,000 in legal fees.(165)

The findings and recommendations of the DIB were submitted to the Minister of Labour on July 9. It had been unable to ameliorate the differences between the antagonists.

On the first day of August, the Labour Legislation Review Committee, chaired by Labour Minister Ian Reid,

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(165) Calgary Herald, "Gainers dispute in minister's hands", December 3,1986

began its work. Reid asserted that the Review Committee was not a reaction to any labour action or strike pursuant to its creation. Whatever the case may be, there seems little doubt that labour unrest in Alberta stemming from the high unemployment rate and the highly publicized Gainer's dispute, played at least a small part in the formation of the Committee.

On the 4th and 5th of September the union and the company met across the table for the first time since June 10th. Nothing was accomplished.(166) The dispute was taken to the Labour Relations Board. The mandate of the Labour Relations Board (LRB) was outlined in sections 4 through 22 of the labour Relations Act, section 21 delinating its powers in the settlement of differences.

> 21 1) When a difference exists between an employer ... and a trade union concerning the application or operation of this Act, any of the parties to the difference may refer the differences to the Board.
>
> 2) On reference of a difference to the Board pursuant to subsection 1) the Board may, if it considers it desirable, cause an investigation to be made as to the facts and in the course of the investigation call the parties concerned before it for the purposes of effecting an agreement between the parties in relation to the difference.
>
> 3) If the Board is unable to effect an agreement between the parties, the Board may make recommendations as to what in its

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(166) Seymour., p.18

> opinion ought to be done by the parties concerned.
>
> 4) If agreement between the parties is not effected, the Board may institute whatever action it considers necessary to ensure compliance with and enforcement of this Act.(167)

However the power of the Board to enforce its decisions under section 21, subsection 4) was greatly hindered by section 18, subsection 3).

> Section 18 3)
>
> A decision, order, directive, declaration, ruling or proceeding of the Board may be questioned or reviewed by way of an application for certiorari or mandamus if the application is filed with the Court and served on the Board no later than 30 days after the date of the Board's decision, order, directive, declaration or ruling or reasons in respect thereof, whichever is later.(168)

Gainers - the conclusion

On November 21, the LRB handed down its ruling on the strike. The Board ordered Gainers to provide a proposed collective agreement to the union, to pay the union $10,000 for the legal fees it incurred in finding pension documents, to refrain from resolutions aimed at terminating the

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(167) Labour Relations Act, [1973]

(168) Ibid

employees' pension fund, and to bargain in good faith.(169) The company appealed the ruling to the Court of Queen's Bench.

On December 1 the company made its first written offer to the union. The offer was made in the auspices of compliance with the LRB ruling yet could hardly have been considered to follow the directive to "bargain in good faith". The company proposed wages between $8.00 and $13.50, tied to a new classification system. Phil Ponting, chief negotiator for Gainers was quoted to say, "We are going to keep the replacement workers. Basically, all of these union people are out of a job."(170) Under the terms of the offer union members would have priority if any jobs came open in the plant or if new ones were created. The contract would cover 6 years, rather than the industry standard of 2, with wage increases of 3% to take effect in February of 1989, 1990, and 1991. The old pension plan would be cancelled, Gainers would take the surplus and a new plan would be established. And, as though the preceeding terms were not enough, an agreement to cancel

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(169) Labour Relations Board file: LR302G1 - Gainers v Local 280 P United Food and Commercial Workers November 20,1986

(170) Calgary Herald, "Gainers proposes deal to end six month strike", December 2,1986

any proceedings before the LRB was demanded.(171) It appeared that the company was deliberately contravening the LRB directive.

On December 2 the union asked Labour Minister Reid to prosecute the employer for failing to act on the LRB directives. The union also requested that the LRB apply to the Court of Queen's Bench to make its rulings a court order.(172) Neither acted.

On December 5, Justice Virgil Mashansky ruled on Gainers'appeal of the LRB directives and overturned the portion of the LRB ruling that applied to the pension plan and the $10,000 legal fees settlement calling the ruling "unreasonable".(173) Also on December 5, Premier Getty held a private meeting with Peter Pocklington observing later that "I expressed my view that workers on strike have to go back" and said that Pocklington "finds that difficult to accept."(174)

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(171) Ibid.,

(172) Calgary Herald, "Gainers dispute in minister's hands", December 3,1986

(173) Calgary Herald, "Gainers wins decision on pension plan funds", December 6,1986. Nikikoruk., p.39.

(174) Calgary Herald, December 6,1986

On December 8, the Court of Appeal granted a stay of decision on the Court of Queen's Bench decision until January. Also on December 8, the Premier met with union representatives. Kip Connolly, International representative for UFCW said that they would meet with Pocklington after speaking with the Premier. Admitting that the union initially had not seen much hope in new talks, he said, "We'll just have to see what kind of weight the Premier carries with Peter Pocklington."(175)

On December 9, Reid became involved in the negotiations and said that "the union has agreed now to less than the Canada Packers national agreement ... that's a sign of progress on their side."(176) But Pocklington refused to move on the replacement workers issue.(177)

Five days later, on December 14, the strike was over.

> 846 members of Local 280 P voted 60.8% in favour of the four-year contract Pocklington offered them: guaranteed jobs for the strikers, the pension plan back under union control, and wages frozen at their current rates for 2 years.(178)

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(175) Calgary Herald, "Getty wants Reid to step into Gainers dispute", December 9,1986

(176) Calgary Herald, "New workers key to Gainers deal", December 9,1986

(177) Ibid.,

(178) Nikikoruk., p.40

How was the strike settled? Following a meeting with Premier Getty, Pocklington commented that "I respect Don alot and he felt that the strike was very unsettling, and I agreed with him and decided to settle on that basis."(179) Unlikely. However, newspaper stories of the period provide some interesting accounts of proceedings which may have had some impact on Pocklington's final decision to sign the collective agreement.

On December 7 it was reported that "The federal government has bought $100,000 worth of meat from the Gainers plant in Edmonton, a spokesman for the Department of Supply and Services confirmed."(180) On December 15, one day after the strike "Mr. Elzinga, Agriculture minister, said he spoke to the Gainers owner about his applying for assistance from a federal-provincial program worth $50 million which pays up to 25% of capital costs for food-processing plants."(181) Actually, Pocklington observed that he had discussed the possibility of applications for provincial incentive grants for expanding his meat-packing

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(179) Ibid.,

(180) Calgary Herald, "Ottawa buys meat from strike-bound Gainers", December 7,1986

(181) Globe and Mail, "Employees vote to end Gainers strike", December 15,1986

operation, with the Premier.(182) And, in a most unseemly coincidence, the March 4,1988 issue of the Calgary Herald carried the front page banner; "Gainers gets loan backing from Province". It announced that "a $12 million loan and $55 million loan guarantee from the Provincial government to Peter Pocklington's Gainers operation" had just been made.(183)

We may never know the full story behind Pocklington's abrupt change in position in the negotiations, however, subsequent developments such as those noted lead us to suspect that the reasons go beyond the Premier's unsettledness.

The strike aftermath - Bill 60

It was noted earlier that a Labour Legislation Review Committee had been created on August 1, two months into the Gainers strike. The Committee's review and final report deal with two of the key issues in the Gainers strike, 1) the (in)effectiveness of the disputes resolutions process and 2) the use of replacement workers in Alberta.

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(182) Nikikoruk., p.40

(183) Calgary Herald, March 4,1988

The remainder of this Chapter will review the relevant Committee findings and recommendations and will conclude with an analysis of their application in Bill 60; the Labour Code to determine the effectiveness of the review process.

Since the decisions of Labour Relations Boards can be appealed to a court of Law, they are restrained from innovation. As Joseph Weiler aptly observes:

> Attempts by the labour boards to fashion new procedural and substantive rules ... (are) often quashed by the courts, who refuse to evaluate the merits of the board's innovations by using anything but the same common law yardsticks applied to inferior courts.(184)

Originally intended as informal avenues to facilitate compromise, Board hearings, discussions and decisions have proven inadequate when faced with the task of resolving labour disputes. However, it is possible - given a stronger authority - that Board's decisions might prove effective. As the Committee noted:

> Employers and employers' organizations by a large majority consider the Alberta industrial relations system to be too legalistic. They provide two reasons for the situation: arbitrators are guided more by the rules of evidence and precedent, and the legislation and regulations have become too complex. They also suggest that since

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(184) Weiler., p.23

> legal measures cannot solve economic issues the legislation and regulations should be simplified, forums established and educational programs and multiparty groups fostered.
>
> Unions and labour organizations by a majority consider the system to be too legalistic.
>
> One union suggested that appeals from Labour Relations Board decisions should be tightened except those on grounds of being ultra vires or in contravention of natural justice. It also suggested that practitioners rather than lawyers should be encouraged in the process.
>
> Professionals and professional organizations by one half consider the system not too legalistic. They suggest that the lawyers are more involved because the arbitrators are using more rules of evidence and precedent, the statutes and regulations have become more complicated, and there are indications of a breakdown in the labour relations system.
>
> Individuals by a large majority consider the system to be too legalistic; one considers it necessary as loopholes exist in the legislation.(185)

In its recommendations, the Committee noted that:

> The operation of the Board as a tribunal be streamlined and amended as follows:
> a) An initial officer or member inquiry with recommendation to the parties or Board Chairman.
> b) A referral to a three member panel which must provide a ruling.
> Both of these processes would be of a

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(185) Labour Legislation Review Committee, Final Report, February 1987 p.78

> "without prejudice" non-legalistic nature and without the obligation on the parties to follow the formal rules of administrative tribunals.(186)

The recommendations of the Committee appear to respond to the concerns of the presentations made to it, yet, unfortunately, the drafting of Bill 60: the Labour Code, incorporated little of the substance of the report findings. In fact, only one change was made; that being toward a more informal initial hearings process.

> section 123 (9) ...the Chairman may, where in the interest of settlement of the matter in dispute it is desirable to do so, assign any matter before the Board to a panel consisting of 1 or 3 members of the Board for the purposes of conducting hearings, engaging in efforts at settlement, and issuing reports and decisions, as may be necessary to resolve the matter in dispute.
>
> (10) In conducting a proceeding under subsection (9) the member or members designated, for the purposes of the matter before them, have all the powers and authority of the Board, but their procedures shall be informal, and without prejudice to the right of any party to the proceeding to appeal their decision with respect to any matter to the Board.(187)

No change was made to recoursive action. Section 18 remains intact as section 131. The Board mandate and

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(186) Ibid.,pp.105-106.

(187) Labour Code [1987] s.123 ss 9-10.

executive powers were not changed substantively by the review process.

The second area of concern raised by the Gainers' dispute deals with replacement workers. Appalled by the violence on 66th Street (outside the Gainers facility), Unions across the west called for governments to

> write strong "anti-scab" legislation, similar to that in Quebec. There it is illegal to hire a strike-breaker. In the West, however, only Manitoba offers strikers any degree of protection. It will allow replacement workers to be hired, but once the strike is over the original worker must be rehired.(188)

Even the government appointed Disputes Inquiry Board suggested in its conclusion that the Minister of Labour give

> serious consideration ... to examining the Labour Act particularly in the area of replacement employees. Since there are several options we will not specifically suggest any one.(189)

The controversy surrounding the use of replacement workers by Gainers certainly applied pressure on the provincial government to review its legislation. A part of the problem facing the government in its review of replacement worker legislation lies in the dirth of operating

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(188) Tom Fennell with Susan Deaton., p.22

(189) "Recommendations of the Disputes Inquiry Board",p.17

examples among those nations from which we have commonly drawn ideas. In its review, the Labour Legislation Review Committee travelled to the United Kingdom, the United States, West Germany, Japan, Australia, and New Zealand. None of the nations visited were able to provide examples of legislation dealing with replacement workers.(190)

The second part of the problem facing the government in its review of replacement worker legislation lies in public opinion in the province. It would appear from public support of the Gainers strikers that opinion was opposed to the use of replacement workers; yet results of the Canadian National Election Study conducted two years prior to the strike, revealed that opinion was split on the issue. Unfortunately for governmental decision-makers, public opinion appears not to be skewed overwhelmingly in either direction. What then, is the Alberta government to do about replacement workers? Should it do anything?

In its final report, the Labour Legislation Review Committee noted that one of the major concerns of Albertans who made submissions to the committee dealt with replacement workers. The summary of those expressed concerns should come as no surprise.

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(190) Labour Legislation Review Committee. Interim Report. pp.5-28.

> The use of replacement workers during a strike or lockout was consistently identified as a major concern, though views differed widely on choices available to employers. Employers generally held that no restrictions should apply, while employees and trade unions felt prohibition or restrictions of various kinds should apply.(191)

The Committee recommended that:

> the existing provisions of the Labour Relations Act ... be combined into a definitive statement and highlighted as a separate section of the Code to assure striking or locked-out workers their right to their jobs.
>
> That replacement workers be temporary for the duration of the strike or lockout.
>
> That replacement workers be paid an amount equivalent to wages and benefits contained in the last collective agreement if the employer has been found to have negotiated in "bad faith".(192)

The three recommendations of the Committee appear to address the problems of major conflict on the Gainers picket line, while, at the same time, not ruling out replacement workers as an option available to employers. Guaranteed jobs pursuant to a dispute would alleviate some worker concerns. Of course, it must be noted that an employer who is able to maintain production with replace-

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(191) Labour Legislation Review Committee, Final Report, p.86

(192) Ibid.,p.98

ment workers has less incentive to settle with his striking or locked-out workers.

The culmination of the review process was realized with the introduction of Bill 60; the Labour Code in 1987. The Labour Code had this to say of guaranteed jobs, replacement workers, and return to work:

> 202 No person ceases to be an employee within the meaning of this Part by reason only of his ceasing to work as a result of a lockout or a lawful strike.
>
> 203 (1) When a strike or lockout ends
>
> (a) as a result of a settlement,
>
> (b) on the termination of bargaining rights of one of the parties, or,
>
> (c) on the expiration of 2 years from the date the strike or lockout commenced,
>
> any employee affected by the dispute, whose employment relationship with the employer has not been otherwise lawfully terminated, is entitled, on request, to resume his employment with the employer in preference to any employee hired by the employer as a replacement employee during the strike or lockout.
>
> (3) An employer shall, on the request of any employee returning to work at the end of a strike or lockout, where there is no collective agreement in place, reinstate the employee in his former employment on any terms that the employer and the employee may agree on, and the employer in

> offering terms of employment shall not discriminate against the employee by reason of his exercising or having exercised any rights under this Part.(193)

Though employees were guaranteed their jobs after a strike or lockout ended, or two years passed, they had no guarantee that they would maintain, at minimum, the benefits of their previous contract; see section 203: subsection (3). There were not terms regarding the regulation of replacement workers. There appeared nothing in the bill to prevent an employer from locking out his unionized employees for two years, in the interim employing replacement workers, then offering his old employees terms of his discretion. Such a circumstance, it is hoped, would be avoided, but is it enough only to hope?

The Final Report of the Labour Legislation Review Committee addressed the major lessons of the Gainers dispute, in an active spirit, recommending quite dramatic changes to current legislation. But, even though the Commission was established and chaired by the Minister, our examples reveal that its recommendations were diluted to the point where they became unrecognizable. The significance of this conclusion will be developed in Chapter 5.

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(193) The Labour Code [1987] s.202,203 ss.1,3.

Chapter 5

SUMMARY OBSERVATIONS

Bill 53; the Construction Industry Collective Bargaining Act, was ignored by employers, the employer's organizations, and by employees (the electricians). Bill 60; the revised Labour Code, failed to address the substantial revisions recommended by the government's own Labour legislation Review Committee. Important interests among employers, employer's organizations, and unions were all critical of the Bill; were even opposed to its explicit philosophic foundation. The Alberta government was having some difficulty in its attempt to govern private sector labour relations.

In this fifth and concluding Chapter we will consider the opinions of the Minister of Labour, the employers and the employees that worked with Bills 53 and 60. We will see that each of our analytical methods will aid our understanding of the circumstances surrounding the Bills. We will discover that the development and implementation of Industrial Relations legislation in Alberta shows that no method, be it pluralist, Marxist, or state-centered, may serve as an independent explanation. The methods must be combined.

We have seen that procedures of a pluralist nature were implemented in the creation of a forum to review standing legislation, but that in the implementation of new

legislation, input from important interests was ignored. The government prefered to act autonomously. If the process concluded here, the conclusion of this research would be fairly simple. It does not, and it is not.

Though the government chose to act autonomously ignoring important interests, it failed to enforce its laws when those important interests rebelled. The government was forced to withdraw Bill 53, only to turn again to autonomous action in the presentation of Bill 60. And finally the government withdrew Bill 60 for review and revision when faced once again with opposition from business and labour.

1) Society-Centered Analysis of Bills 53 & 60

i) Pluralism

Pluralist methods of analysis reveal two reasons for the failures of Bills 53 and 60. The first reason is found in our discussion of the circumstances surrounding Bill 53. Woods and Weiler clearly prescribe that meaningful consultation must be incorporated in legislation. We know that this did not occur. Second, Woods and Weiler assert that there must be an informal hearings process put in place, one that has the authority to make final rulings on the

cases before it. A need for such a process has been clearly demonstrated by the Gainers strike yet Bill 60 failed to implement such a structure - even though the Labour Legislation Review Committee recognized the need.

In Chapter Three we found that Bill 53 had not been well received by the parties it was intended to govern; that most submissions to the Labour Legislation Review Committee opposed a separate statute for the construction industry, yet the government proceeded of its own accord to draft and pass the legislation. Labour Minister Reid claimed in January of 1988 that

> we've put into operation a system that both sides said 'this system will work and we can get a collective agreement under it', and they've been out there trying to do it - without a tremendous degree of success. ... there has been alot of antipathy built up. ... They've got a lot to learn.(194)

Bill 53 appears not to be the learning tool that Reid hoped it would be. Weiler's observations serve to aid us in realizing why Bill 53 failed. Weiler observes that "both management and labour should participate in the planning and design of the new legal regime."(195) The Labour Legislation Review Committee, chaired by Reid, asked

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(194) Labour Minister Ian Reid., interviewed by author, January 1988

(195) Weiler., p.51

both management and labour in the construction industry to consider a proposed solution to their problem. The industry did not want a unique status; the Minister disagreed. "We didn't feel that that industry should wait to deal under Bill 60."(196) Relations under the Bill did not improve, but then how could they?

If successful labour legislation requires the active cooperation of labour and management, what is a government to do in its absence? By Dahl and Lindblom's analysis, the government should involve itself in a conciliatory role, avoiding involvement as an arbitrator.

It appeared that the Alberta government had learned a lesson from Bill 53. In Bill 60, the government did not try to force consensus, rather, it encouraged consensus through a preamble.

Labour Minister Reid seems to agree with Dahl and Lindblom as he explains Bill 60.

> Labour relations between employees and employers is not only the legislation. You can't put it all in legislation. We are trying to come up with a concept of fairness and equitability untrammelled by government involvement.(197)

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(196) Reid.,

(197) Ibid.,

Bill 60 was a unique bit of labour legislation. It is true that no substantial change was made in the areas of the legislation that we considered, but the unique quality of the Bill is not found among its statutes; but rather, in its preamble.

The preamble to Bill 60 was a statement of philosophy expressed by the government, for the government, and for the people of Alberta.

> WHEREAS it is recognized that a mutually effective relationship between employees and employers is critical to the capacity of Albertans to prosper in the competitive world wide market economy of which Alberta is a part; and
>
> WHEREAS it is fitting that the worth and dignity of all Albertans be recognized by the Legislature of Alberta through legislation that encourages fair and equitable resolution of matters arising in respect of terms and conditions of employment; and
>
> WHEREAS the employee-employer relationship is based on a common interest in the success of the employing organization, best recognized through open and honest communication between affected parties; and
>
> WHEREAS employees and employers are best able to manage their affairs where statutory rights and responsibilities are clearly established and understood; and
>
> WHEREAS it is recognized that legislation establishing general employment standards and supportive of free collective bargaining is an appropriate mechanism through which terms and conditions of employment may be established;

THEREFORE HER MAJESTY, ...(198)

The philosophy seems written from Joseph Weiler's conclusions. The government's decision not to compel consensus between employers and employees through legislation is sound. We have the proof of this conclusion in the example provided us by Bill 53. Bill 53 required employers and employees to meet, to share information and to conclude a collective agreement. It also was an attempt to force consensus. It failed because the parties refused to accept the government's parameters.

If submissions to the Labour Legislation Review Committee were an indication of the interests of those in the labour environment (and I believe that they were), then the preamble to Bill 60 seems to reflect those interests.

Overwhelmingly, submissions to the committee from employers, unions, professionals, and individuals indicated support for a non-legislative method to encourage better communication, respect and recognition of mutual concerns and commitments.(199)

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(198) The Labour Code, [1987] pp.1-2.

(199) Labour Legislation Review Committee; final report. pp.68-69,73-75.

The preamble to Bill 60 responded to concerns expressed to the Committee. The preamble to Bill 60 expressed the sentiments of the majority of those actively involved in labour relations; that open and honest communication should be fostered in Alberta's labour relations.(200) Yet our examination of relations in the construction industry, relations between Peter Pocklington and his employees, and the opinions of the president of the Alberta Federation of Labour indicate that there is a faction in Alberta which opposes the majority's appraisal. Important actors in Alberta's labour arena are philosophically opposed to the fundamental relations expressed in the preamble.

The preamble recognized the need for open and honest communication. Dave Werlin, president of the Alberta Federation of Labour rejects that premise. "You can't win by being a nice guy who tries to cosy up to people attacking you".(201) Unavailable for comment, Peter

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(200) This conclusion is based on Mancur Olson's argument that rational actors will participate in an activity only when the benefits of doing so outweigh the costs. Therefore it is not necessary to require that all actors in the labour environment need make submissions to the Labour Legislation Review Committee in order to conclude that its findings are representative. Olson., The Logic of Collective Action., (Harvard University press, Cambridge 1965)

(201) Linda Slobodian., "Making Alberta see red" Western

Pocklington expressed his opinion through action. When the Labour Relations Board ordered him to make a contract offer to his employees and to bargain in good faith with them, he appealed the ruling and mocked the impotence of the Board and the union with an insulting contract offer. Neil Tidsbury and the contractors association attended meetings with the construction trades unions but neither side was able to overcome its distrust.

The preamble recognized that free collective bargaining was the appropriate vehicle for labour relations in Alberta. Peter Pocklington claimed that he would never sign another collective agreement. In January of 1988, Douglas Ford, Pocklington's executive assistant asserted that the company felt that the whole concept was "very dangerous to business in the province".(202) Neil Tidsbury does not believe that collective bargaining is an appropriate mechanism for labour relations.(203) And Al Rogerson, plant manager for Lakeside Packers in Brooks summarized his company's sentiment; "What's to negotiate?" Clearly admitting that the company intended to ignore the collec-

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Report,Vol.2(17) May 18 1987, p.9

(202) Douglas Ford, interviewed by the author, January 1988

(203) Tidsbury, interviewed by author November 1987

tive bargaining process, Rogerson observed that workers had their cause, but "my cause is bigger."(204)

At least this faction can agree on one point; the philosophy expressed in the preamble to Bill 60 indicates the government's philosophy. As Jim Selby, resource director for the AFL, observes, "there is no common interest, the preamble is indicative of the Minister's feeling."(205)

This investigation indicates that some involved in the labour relations environment of Alberta cannot even reach a consensus of opinion that consensus is a good idea. Important actors see themselves diametrically and fundamentally opposed to each other, and to the preamble. The preamble may express the opinion of a majority of those involved in Industrial Relations in Alberta, but so long as there exists an active minority of uncooperative individuals, there must also exist coercive mechanisms - and a government willing to use them in an even-handed way.

Herein lies the predicament facing those considering policy analysis. The uncooperative action of a minority

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(204) Calgary Herald, "Strikers vow to pursue their beef" June 2 1986

(205) Jim Selby, interviewed by author March 1988. Such an observation seems clearly to be an indication of a government acting autonomously. We will discuss this in a moment.

faction appears to require a government policy which includes coercive mechanisms. Cooperation and consensus cannot always be realized in the real world. Bill 53 was an attempt to create (for all intents and purposes, from nothing) a mechanism to begin cooperation. It failed to generate a collective agreement, but had the government intervened it would have failed to generate consensus.

In forcing Bill 53 on the industry, Labour Minister Reid failed to recognize that the interest of the majority expressed in the Bill was not the interest of significant players in the industry. To pass legislation which applies the interest of the majority on an uncooperative minority will not achieve voluntary compliance. Should provincial legislation then, be actor specific? No. Rather, legislation must provide for as much of the community as possible. It must, therefore, be flexible.

Legislating consensus is out, but must the government turn to coercion for the uncooperative faction? The Werlins refuse to trust the employers, the Pocklingtons refuse to accept the right of unions to exist. What can be done to change such attitudes?

In refusing to accept free collective bargaining, the context of modern labour relations in Alberta expressed in

the preamble to Bill 60, is lost to this faction.(206) There is no common frame of reference from which to begin a discourse. Resolution of the Gainers dispute resolved nothing. The Alberta government succeeded only in buying Pocklington's acquiessence for a time.

ii) Marxism

Marxists such as Panitch claim to understand the problems of the labour environment informed by a premise substantively different than that informing Woods or any of the neo-pluralists. Panitch would explain the conflict between Pocklington and his employees, and between the contractors association and the building trades unions, as intrinsically subjected to the inherent contradictions between capital and labour, and therefore, over the long term, irreconciliable. Only a change of this fundamental contradiction could allow a resolution.

Marxists would also suggest that since the government acts as the agent of the dominant class(es), we should not be surprised to see it take the side of business interests. A Marxist analysis would be quick to point to the police

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(206) H. D. Woods concurs. "The (collective bargaining) process cannot survive without something approaching a general consensus regarding its underlying premises". p.92

support given to Pocklington in his fight with his striking employees, and to the deal struck between Pocklington and the government to end the strike, as clear evidence of the state's commitment to big business.(207)

However, such evidence of the state acting as the vassal of the dominant class(es) cannot be considered conclusive. Consider reaction to both Bills 53, and 60. As a Marxist analysis would predict, labour interests were not satisfied, but - and significantly - neither were business interests. Of course, one might attribute the government's divergence from the immediate interests of business as necessary to consolidate the dominance of business for the long run. However, this is unsatisfactory given the significance of Industrial Relations legislation.

Industrial Relations legislation is the very foundation upon which the dominant class(es) create their relation to the dominated classes. It is hard to believe that a servant of the dominant class(es) would not listen to its masters especially in the case of Bill 53, where there was

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(207) Rolf Gerstenberger., "1000 workers arrested in 6 months", Canadian Dimension., Vol.207 Dec\Jan. 1986\87., p.34 "Any logical person trying to be objective about this situation would have to come to the conclusion that the police, the courts and jails are part of the state apparatus used by the rich to suppress the workers struggles."

a clear consensus of opinion opposed to the Bill. No, Marxism as an explanatory tool does not provide the understanding we seek. It may help us to understand the actions of individuals such as Dave Werlin, but on the whole, we require a different analysis.

2) A State-Centered Analysis of Bills 53 & 60

By Reid's admission, the Alberta government attempted to 'educate' its citizens by introducing legislation predicated by its sense of fair play. Unfortunately, its sense appears not to be the common sense, and as a result, it is contested. It is here that we see the Alberta government acting in an autonomous fashion. It is here too, that we see the result.

Our review of Bills 53 and 60 clearly reveal that the Getty government acted on its own. There can be no question that in the implementation of its Industrial Relations programs, the government attempted to act in an autonomous fashion - even when faced with dissent from major interests in the form of labour and management. Does the fact that both Bills were withdrawn, 53 abandoned and 60 revised, indicate that governments can not act autonomously under such circumstances as those reviewed? No. In fact, it is under such circumstances that a government must

act autonomously, but the problem then becomes: by what method should it act? How does the government deal with actors who refuse to cooperate but remain within legal bounds such as Pocklington and Tidsbury?

It is in analysis of the uncooperative faction that a measure of economic self-interest becomes most useful. For example, economic self-interest easily explains the actions of Peter Pocklington. With no legislative mechanism to restrain the use of replacement workers, Pocklington chose to make full use of an available labour pool to reduce his labour costs. And, taking advantage of an impotent disputes resolutions process, he was able to maintain low labour costs for over six months. Therefore Pocklington's actions were no less than what we could have expected from anyone seeking to maximize profits.

The same conclusions may be drawn in the long-running conflict between the contractors and the building trades. For four years the building trades and contractors operated without collective agreements. And for four years, wages remained below their 1984 level. Can there be any wonder why the contractor's association was reluctant to cooperate under the auspices of Bill 53? To cooperate would not be profitable, the control they enjoyed in the realm would be lost. Some incentive for cooperation must be included. It

is not enough for government to provide only a framework to order a relationship, some mechanism of coercion must be included (and occasionally implemented), to provide an incentive for cooperation. Though Bill 53 provided such a coercive mechanism, the government decided not to implement it and the bill failed.

A policy response which discouraged uncooperative action by creating a financial disincentive would solve this problem. On this point, Doern's managerial government, Nordlinger's autonomy-enhancing government, or Pal's bureaucracy, operating from an actuarial ideology, could each agree. The important point in this solution is that only an autonomous government would be able to effect its implementation. Does the Alberta government truly exercise autonomous control in its Industrial Relations policies?

As we have already noted, Bill 53 was to a great extent the creation of the Ministry of Labour. Observations made by the Minister indicate that he sincerely believed in constructing a pluralistic arena for the development of Industrial Relations. Such an arena would implement Justice Wood's 1968 recommendations. As you will recall from our discussion in Chapter 1, Wood's Task Force recommended "greater reliance on preventitive mediation, continuous bargaining, and experimental clauses."

With Bill 53 Reid attempted to force a dialogue on the construction industry. The attempt failed. Interestingly, Reid's reaction to the failure seems pluralistically informed. Though he had the mechanisms available to intervene in the stalemated discussions - he did not.(208) So where does this leave us?

Conclusion

That Reid, and the Alberta government, acted autonomously in the creation of Bill 53 there can be no doubt. Their failure however, lay in their self-assured paternalistic attitude - that just knowing best and forcing compliance would be enough.

Even after being advised that special legislation for the construction industry would not be acceptable, they proceeded. The failure of the Bill must be understood to be separate from the failure of the government. The failure of the Bill has already been explained by a pluralist analysis, but the failure of the government goes further.

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(208) An arbitrary decision by Reid at that point would have contravened Dahl and Lindblom's prescription that governments should not intervene, that they should act only as mediators; as conciliators, (though Reid gave no indication that he made his decision based on this theory).

Nordlinger's autonomous government would have used its autonomy-enhancing capacities and opportunities to influence the opinions of those standing opposed to the Bill. To make this point in simpler terms - the government should have put more effort into selling the Bill. The Alberta government made no such effort. Instead it used legislative cooercion, then for all intents and purposes, abandoned the field to the players.

To make Bill 53 effective in the construction industry, the government could have chosen only one course. Clearly there was no common ground for discussion, thus the success of the government hinged on its ability to capitalize on its autonomy-enhancing capacities and opportunities. It would have had to create a philosophic common ground for discussion, then and only then could it expect to be able to create a physical/legal common ground for discussion. In other words, if it was the government's intention to create a pluralist Industrial Relations environment for the construction trades, it would first have had to use its capacities and opportunities to inculcate pluralistic sympathies in its constituency. It did not and it failed.

Do the lessons of Bill 53 apply generally?

Bill 53 was unfortunately a common construct in that it tried to override the desires of active groups. Leo Panitch's review of recent Industrial Relations reveals an inclination on the part of both provincial and federal legislators to use unilateral legislative intervention to deal with industrial relations disputes.(209)

The Alberta government's failure in Bill 53 should serve as a warning for those still inclined to overide major interests. Lessons for future labour legislation aside, the fact of the matter is, the Alberta government continued to act in a clearly autonomous fashion - and failed. But more importantly for the purposes of this work, society-centered analysis explains the cause of that failure when combined with a state-centered analytical perspective.

> A government can act autonomously <u>if</u> it listens to, ameliorates, and if need be - acts to discourage through a system of disincentives - major interests in the social realm.

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(209) Leo Panitch and Donald Swartz., pp.30-34.

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Figure 2.1

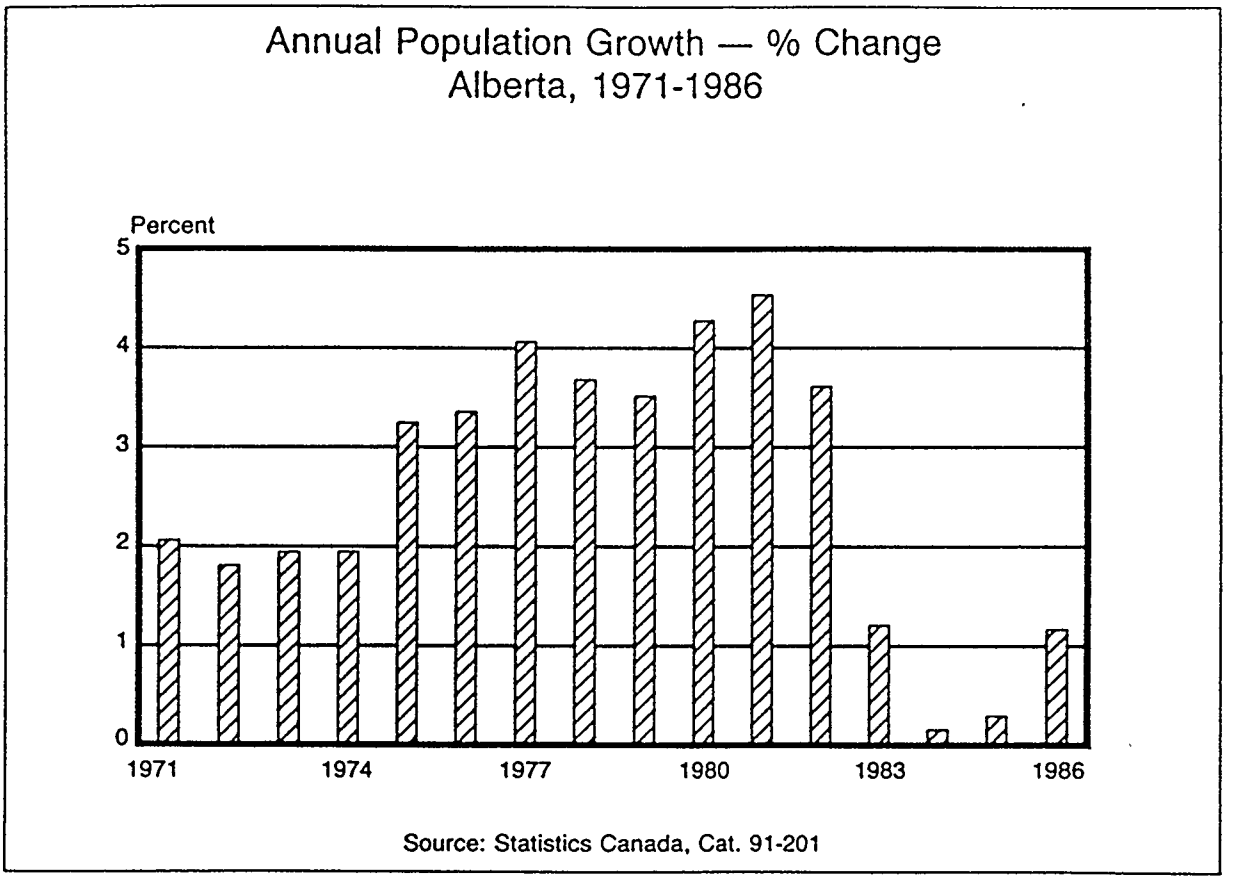

Annual Population Growth — % Change
Alberta, 1971-1986
Percent
5
4
3
2
1
0
1971
1974
1977
1980
1983
1986
Source: Statistics Canada, Cat. 91-201

Figure 2.2

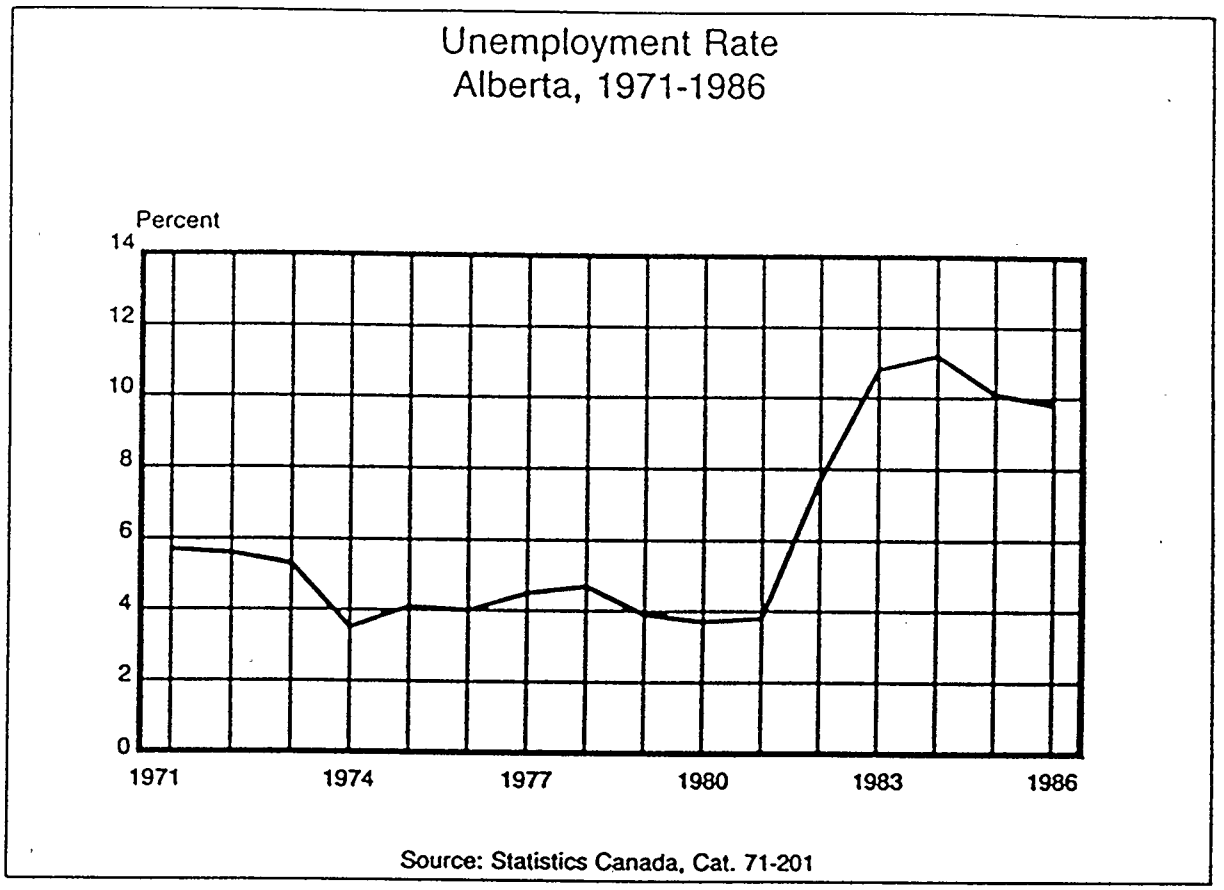
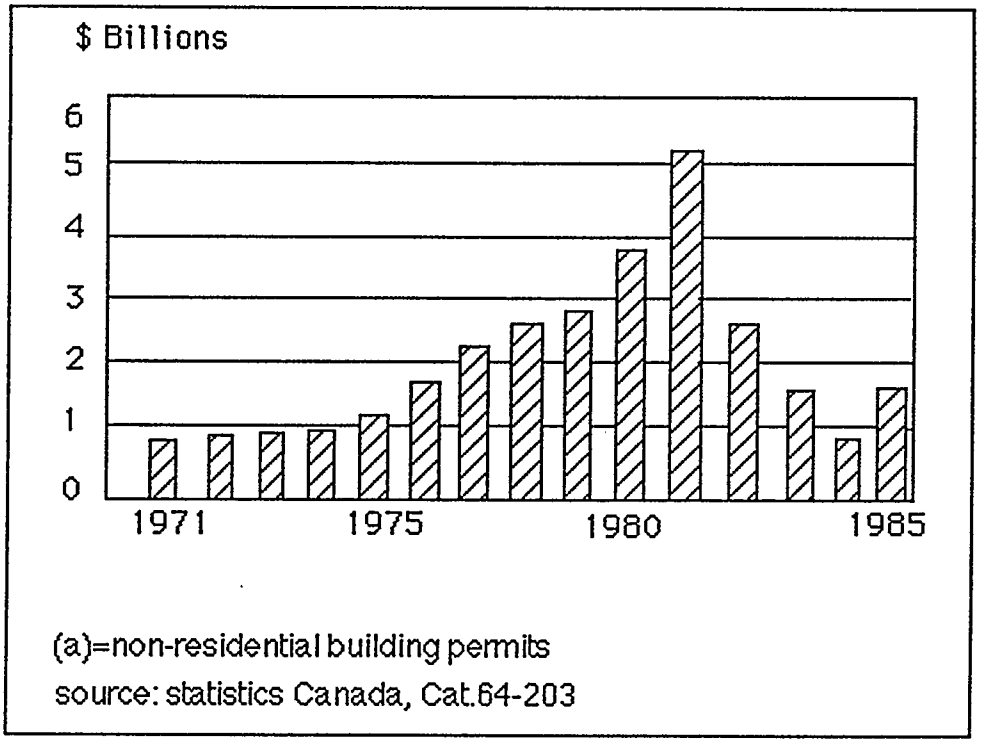

Unemployment Rate
Alberta, 1971-1986
Percent
14
12
10
8
6
4
2
0
1971
1974
1977
1980
1983
1986
Source: Statistics Canada, Cat. 71-201

Figure 3.1

Value of Building Permits

Alberta, 1971-1985 (1987 $) (a)



(a)=non-residential building permits

source: statistics Canada, Cat.64-203

Table 3.1

Value of Institutional, Commercial and Industrial Work Performed in Alberta: 1975-1983

Year	ICI (a)
1975	611
1976	675
1977	838
1978	1208
1979	1842
1980	2284
1981	3124
1982	3339
1983	2434

(a)=measured in million dollars (1987)
source: Statistics Canada

Table 3.2

Alberta Construction Employment/Unemployment: 1976 - 1985

Year	Employed (000)	Unemployed (000)	Unemployment Rate (%)
1976	78	5	6.0
1977	81	8	9.0
1978	93	8	7.9
1979	102	7	6.4
1980	99	6	5.7
1981	94	5	5.1
1982	77	15	16.3
1983	68	29	29.9
1984	62	27	30.3
1985	69	17	19.8

source: Statistics Canada, "The labour force", 71-001

Table 4.1

Sentiments of Albertans Toward Replacement Workers in 1984

For replacement workers	50.8%
Against replacement workers	40.0
Neutral or No opinion	9.1

(n)=304
source: Canadian National Election Study, 1984